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STATE OF CALIFORNIA

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 17, 1990

2:00 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

MAUREEN P. HIGGINS, Director
Housing and Community Development

SENATOR QUENTIN KOPP

JAMES E. GILLERAN, Superintendent of Banks

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CHAIRMAN ROBERTI: I'm going to take up Governor's Appointees now in the hope that Senator Petris will arrive. I think there are probably fewer questions on Ms. Higgins than on Mr. Gilleran.

SENATOR MELLO: I have a lot for her.

MS. MICHEL: Senator Mello says he has a lot. I don't know whether he's serious or not.

CHAIRMAN ROBERTI: I think I'll take her appointment up first.

Maureen P. Higgins, Director, Department of Housing and Community Development.

We'll ask you what we ask all the Governor's Appointees, as well as we know you, however, and that is why you feel you're qualified to assume this position?

MS. HIGGINS: Thank you, Senator Roberti and Members of the Committee.

I want to begin by just giving you a little bit of history about my background. I am an attorney by training. I graduated from the McGeorge School of Law in 1989.

After that time, I worked for three-and-a-half years in the Attorney General's Office, and then in 1983, I joined the Deukmejian administration in the Governor's Office as both Deputy Legislative Secretary and Chief Deputy Legislative Secretary. In that role, I was involved in all of the legislative housing issues, as well as other issues related to

business, transportation, education, criminal justice, and tax issues.

My role, as it related to the housing issues, involved being -- coordinating with the Business, Transportation and Housing Agency and the Department of Housing in facilitating the Department's positions on legislation relating to housing. It also involved facilitating negotiations with the Department and other departments in the administration, either Department of Finance or other policy departments, on legislation, as well as facilitating negotiations with outside parties, either advocacy groups or constituent groups, or any other interested parties in legislation.

I was also responsible for meeting with the advocacy and constituent groups and assisting in advising the Governor on housing legislation. In that role over the last seven years, I've been involved in most of the major housing legislation that's passed, most of which you will recognize since a lot of it was authored by Members of this Committee. That's including the establishment of the Emergency Shelter Program, the Housing Trust Fund, the California Housing Partnership Corporation, the Governor's Housing Package, the extension of the Low Income Housing tax credits, and of course, the bond programs offered by Senator Roberti and Speaker Brown.

On October 10th, I was appointed as Director of the Department of Housing -- exactly one week before the Bay Area earthquake. Since that time, with the help of a great many

dedicated people in the Department of Housing, I have been involved with working with the Office of Emergency Services and local government officials to try to determine the amount and the extent of the damage from the earthquake. I've been involved with working with Legislators and their staff and the administration in fashioning a $75 million housing earthquake relief proposal in response to those damage estimates, and have been involved in the design and oversight of the establishment of five temporary mobilehome parks in the earthquake area to house earthquake victims, and in getting the half a dozen or so programs that were established in the legislation up and going and getting those funds obligated and out to the victims in a timely fashion.

At the same time, I have been working with key staff in the Department to make sure that we implement the Prop. 77 and Prop. 84 bond programs in a timely and efficient manner.

And finally, I have been working with the Governor's Office, the Business, Transportation and Housing Agency, the California Housing Finance Agency, and the Department of Finance in many of the initiatives that appeared in the Governor's State of the State and the budget. These include: the $2 billion bond program for the first-time home buyers, which will be administered by CHFA; the full and permanent staffing the Department needs in order to implement the bond programs well; a $15 million program to assist the earthquake-afflicted areas in establishing affordable housing; and a $3 million appropriation from the Housing Trust Fund for such programs as the Emergency Shelter Program, the Farmworker

Housing Grant Program, and the Office of Migrant Services.

I believe that this background and experience qualifies me to be Director of the Department, and I would respectfully request your aye vote on my confirmation today.

CHAIRMAN ROBERTI: Thank you very much.

I do have one question. On the Housing Bond act, there's been some concern that the funds have been moving slowly. I understand the pace has picked up a little, and that essentially is my question.

Does litigation over Article 34 complicate this disbursement of funds?

MS. HIGGINS: Okay.

To answer your first question, I think it's just important to point out that in the baseline budget before the bonds were implemented, we had about -- roughly $75 million that the Department put out, and all of a sudden, within six months, we had a $425 million bond program.

We had several steps that we needed to go through in order to get that program in place, which included: meeting with attorneys to determine whether or not the bonds are taxable or tax-exempt; meeting with the Controller's Office to set up the accounts necessary; meeting with DPA and the Department of Finance to establish the positions we needed. We set up a series of advisory committees to get advice on program design. There were some statutory cleanup changes that we needed to enact, and of course, we needed to do the regulations to get all of the various programs up and going.

I think the Department's done a good job in that

short period of time to start from that ground zero and go through all those steps. We're now at the point where we are issuing the Notice of Funding Availability for a variety of these programs and are receiving applications and have been putting money out the door.

I think, Senator, that you're going to see a lot of activity in the next year. I can assure you that it's a high priority of mine to make sure that those bond funds go out in a timely fashion.

As far as Article 34 goes, it's been determined in discussions with legal counsel in the Department that we don't believe it has implications for the rehab. program. And as far as the new rental housing construction program, we're going to have to determine if projects that come in have blanket authority already in their jurisdictions, or if they have exceptions that come under. To the extent we don't, we're going to have to deal with that at the time. So far, that issue -- nobody has come in, obviously, since we just put the funds out, that couldn't qualify. So, we'll have to see how big a problem that will be.

CHAIRMAN ROBERTI: Very good. Thank you.

Any other questions of Ms. Higgins? Senator Petris.

SENATOR PETRIS: We haven't had an update from the Department since 1982 on the statewide housing plan. Are you working on one now?

MS. HIGGINS: Yes. The statewide housing plan was released in February of 1988, and a two-year -- it's supposed to be updated every two years. So, we -- the next edition is

due in February of '88 [sic].

I can tell you that we have a draft that we're working with the Department has prepared and has come up for review. We want to update it to make sure that it includes the bond programs and the initiatives that the Governor has put forth in the housing in his State of the State, so I would expect it to be out sometime in the spring, Senator.

SENATOR PETRIS: In the process of that, do you review the local plans, the housing element in those local plans?

MS. HIGGINS: Yes, yes. the Department of Housing is responsible for reviewing local housing elements.

SENATOR PETRIS: Can you tell me how many are lagging behind?

MS. HIGGINS: Boy, I can't tell you exactly how many are lagging behind. We review over 200 a year. The number has been increasing.

I can tell you that that unit is an extremely efficient unit in the Department. They spend a lot of time and effort in working with locals in trying to iron out the problems in their housing elements.

SENATOR PETRIS: Is it true there's a fairly high percentage that are not carrying out a housing element plan as required?

MS. HIGGINS: That's sort of a hard question to answer.

SENATOR PETRIS: We've been hearing that for a long time.

MS. HIGGINS: Yes.

What happens is, the law requires us to review and comment on it, but there isn't a requirement that -- that once it goes back to them, that they actually have to -- that we have to do anything when they file a final housing element with us.

So, I can't actually tell you the percentage of final housing elements filed that are in and out of compliance.

As I said, we do do a lot of work with those local agencies in trying to correct the problems when the draft plan is up for our review. But whether or not they carry out a lot of the things that we have suggested, I can't give you exact percentages on that.

SENATOR PETRIS: Does anyone have the responsibility to see that that's done?

MS. HIGGINS: Does anybody -- if you're asking if anybody has responsibility or is required to actually look at the final plan adopted and say whether it's in or out of compliance, the answer is no. Our responsibility is to look at the draft and make reviews and comments.

SENATOR PETRIS: So, the cities that are opposed to the basic idea of a housing element, they can just ignore it? No penalty? There's no enforcement?

MS. HIGGINS: The housing element, when it was enacted in the Legislature, was a real delicate balance. It was -- it was conceived as a planning document to help locals plan out what their housing needs are over the next five

years, and how they're planning to meet those needs.

It's a delicate balance between the State telling them what they have to do, and between local control and, you know, their ability to control their own destinies, basically. So, they introduced this balance, this sort of precarious balance between State guidance and review, and local authorities having the ultimate final say.

So, all I can say is that with that balance, and with the idea that it was a planning document, that's how we ended up with this situation.

SENATOR PETRIS: How do you handle no-growth cities that say, "It doesn't matter what the need is. We don't want any more housing in this community, period." Does that provoke the State into doing anything?

MS. HIGGINS: The way the Department has been handling those issues are, we look at the regional share of housing need the locality has, and we look at the programs that they have to meet that need and any constraints that they may have against meeting that need, and then the programs to address those constraints.

It is possible for a growth control jurisdiction to be able to meet their -- their regional fair share housing need with other programs, despite the fact that they have a no-growth ordinance. But we do comment on that and see whether or not they overall picture allows them to meet their overall housing needs.

SENATOR PETRIS: What's a region? Is that a whole county or what?

MS. HIGGINS: Yes -- well, I'm not sure it's defined by county, Senator. I can't tell you that off the top of my head. I don't think it's limited necessarily to a county, but I'd have to check that for you.

SENATOR PETRIS: Is it a broad market area, perhaps? So, if there's enough provided in one part of it, that covers it for the whole region?

MS. HIGGINS: See, what happens is, they allocate -- a regional share is allocated, and then individual jurisdictions, cities and others in that regional area, get an allocation of the overall regional need.

SENATOR PETRIS: Can you give us an idea of the allocation of monies under Senator Roberti's latest bond measure for low-income? Part of it was low-income needs.

MS. HIGGINS: Senator Roberti's measure was Proposition 84, which provided $300 million in bond appropriations, 25 million of which went to the CHFA. So, the Department of housing has 275 million of that.

Of that amount, 100 million was set aside for the Rental Housing Construction Program, which is new construction of low-income housing. We have just, in late December, filed the emergency regulations for that program and issued a Notice of Funding Availability in early January for $40 million under that program. So, we expect to be receiving applications for the program in the next couple of months, and some of those applications should be going to the Loan and Grant Committee in the Department by the end of March.

The other program --

SENATOR PETRIS: How long will it take for the first turning over of dirt on the ground?

MS. HIGGINS: That's a good question, which I can't give you a specific answer on.

I can tell you in that program how long I think it will take before we start putting funds out, before we allocate funds, but they then go to the local applicant -- either the nonprofit builder or the local government agency -- and then they have to turn around and start building the project.

So, I don't have an average estimated, you know, time-frame for, you know, for what that would be.

SENATOR PETRIS: What's your estimate on when the money is going to be going out?

MS. HIGGINS: As I said, the $40 million notice went out in January, and I would expect the first applications to be into the Department to the Loan and Grant Committee by the end of March. So, I think that we could obligate at least some of those funds by that time.

SENATOR PETRIS: What is the plan for the next batch?

MS. HIGGINS: The next batch? The plan is to go out with a $60 NOFA later in the year, probably in late spring, and then we plan for two $50 million NOFAs in that to go out at two different other points in the second half of the year.

SENATOR PETRIS: How's that allocated geographically?

MS. HIGGINS: It's not allocated by geography. We

have a rating and ranking system that looks at other --

SENATOR PETRIS: Statewide?

MS. HIGGINS: Yes, right, statewide.

SENATOR PETRIS: As you're probably aware, I'm usually concerned about low-income housing. Can you give us a status report on what's happening in the various limited amount of legislation we've had recently?

MS. HIGGINS: Very recently? Actually, since the time -- in the last seven years, there's actually been a lot of legislation implemented to try to assist low-income housing. The number of loan and grant programs in the Department has increased from 14 to 27. A lot of that is directly due to legislation authored by, as I said, several Members of this Committee and some by the Governor.

Among those programs are the Emergency Shelter Program, as I mentioned, and the Housing Trust Fund, which you authored, the Mobilehome Park Assistance Program. I think there was a reconfiguration of the Self-Help Housing Program. And, of course, the bond programs, which have been the biggest infusion of funds in that time.

SENATOR PETRIS: How much is in the Self-Help Housing?

MS. HIGGINS: Self-Help Housing Program in the Department has a baseline budget of 200,000 and we expect roughly 250,000 in interest payments and rollover payments to come into the program. So for the budget year, I would anticipate about 450,000 in local assistance in that program.

SENATOR PETRIS: That doesn't go in to actual

capital outlay construction. That's administrative --

MS. HIGGINS: No, that's technical assistance.

SENATOR PETRIS: -- and advising?

MS. HIGGINS: Yes, right.

SENATOR PETRIS: Is that funded by the private sector?

MS. HIGGINS: There's actually some other sources of funding for Self-Help Housing. CHFA has their Proposition 84 funds for first-time home buyers. I believe they're using some of that for Self-Help housing. And I also believe that they set aside some of their reserve funds; I think it was a million dollars for this purpose.

SENATOR PETRIS: You mentioned 3 million coming out of the trust fund. How much is in it?

MS. HIGGINS: The trust fund?

SENATOR PETRIS: Yes, is that the whole amount?

MS. HIGGINS: No, it's $3 million in tidelands oil funds, and it's a million-and-a-half for the Emergency Shelter Program, and a million for Farmworker Housing Grant, and half a million for Office of Migrant Services in the Department.

SENATOR PETRIS: In connection with the earthquake, do you coordinate with the federal people --

MS. HIGGINS: Yes.

SENATOR PETRIS: -- in determining where the money's going to go and how much?

MS. HIGGINS: Yes, we are.

In fact, we're taking a number of steps to try to increase that coordination. We are trying to learn from

prior, you know, mistakes in disaster programs. A couple -- we've done a couple of things to try to coordinate.

We have talked to them about connecting up with their data base, which is very important, and we haven't been able to do that. So, for example, in the Whittier earthquake two years ago, where they had established a program of last resort similar to this one, it was difficult for applicants that had gone through the federal process, to SBA, and gotten turned down, they had to then come to the State and show us they got turned down for the full amount or part of the amount. And they had to -- basically, the onus was on them to show that they had been turned down.

With what we have done by hooking up to the federal data base, we'll be able to confirm that information quickly. So, it has the advantage of not putting the burden on the applicant, and also it has the advantage of speed.

So, we are hoping, through mechanisms like that, to coordinate with them better so that while applicants are applying at the federal level, we can also be looking at their applications and referring their applications to our local agencies and trying to get it so the funds come down at relatively the same time period so they can get going on the repair.

SENATOR PETRIS: You don't do joint projects? You don't do projects in which they put in their amount and we put in ours?

MS. HIGGINS: Do you mean on earthquakes?

SENATOR PETRIS: Yes.

MS. HIGGINS: Yes, we do.

A good example is the Emergency Shelter Program. We have a temporary program that was -- $5.5 million was appropriated for that, and in fact, we have obligated all of that money.

What we did is, we entered into a MOU with FEMA to try to leverage those dollars, which was successful. FEMA has now agreed to pay for a portion of the cost that we've already paid for, which means that we anticipate getting another maybe one-and-a-half to two million dollars from FEMA, which we can then turn around and roll over into those earthquake applications.

SENATOR PETRIS: A few days ago, there was a front-page story in the Oakland Tribune showing this couple whose house was totally demolished, and they can't seem to get anywhere with FEMA. Just totally wiped out. There's just all kinds of reasons given, but the bottom line is, they haven't been able to move at all.

Is there a State office to whom they should be directed?

MS. HIGGINS: Yes. Do you know if they've filed an application with FEMA at the disaster assistance --

SENATOR PETRIS: Yes, they filed an application. They did that in a timely manner.

MS. HIGGINS: As long as they've filed an application, we can find them in our computer. So, in fact, we're undergoing --

SENATOR PETRIS: May I provide the names?

MS. HIGGINS: Yes.

SENATOR PETRIS: It's a very, very sad story.

MS. HIGGINS: Yes, definitely, I'd be happy to take the names.

We have a procedure in place whereby we're going to go into our computers, and everybody that has filed an application with a disaster assistance center, we're going to be following up with them. So, even if they didn't fill out an application but they just took one, we're going to follow up with those folks and see whether or not they were able to get any help, see if there's anything we can do. We can tell them about the availability of our program.

SENATOR PETRIS: Why don't I just send you the story.

MS. HIGGINS: Fine.

SENATOR PETRIS: Thank you.

Just a little bit more. We've also concerned ourselves, some of the Members, with the expiring of the federal programs. We've had all kinds of estimates, but even if you take the lowest number, there's a considerable number. Many thousands of people are going to be facing eviction when the owners, lawfully and properly, decide they're going to go another direction.

What do we have at the State level to help beef that up? The only legislation I've had amounted to notification, matching the federal the last go-around.

MS. HIGGINS: Right.

There are a couple of things. I think in terms of

-- if you look at resources, I think, at the State level the biggest single resource is the Low-Income Housing Tax Credit, and that's both a State credit and a federal credit. The Governor signed legislation last year that was sponsored by the Department to extend --

SENATOR PETRIS: Who gets the credit? The builder?

MS. HIGGINS: Yes, the credits are allocated through the Mortgage Bond Allocation Committee to project sponsors that can come in. They're nonprofit and for-profit builders.

The Governor did sign legislation last year to extend that credit if it was extended at the federal level. At the federal level, they extended the credit for one more year, and therefore we have both a federal and a State tax credit this year, which should amount to about 35 million, I believe, in State funds. So, that's one very important resource.

Another resource that I think we need to look at, which isn't a State resource but it's also something we should look at, is redevelopment funds. There's tax increment financing at the local level, and there's a State law requirement that 20 percent of those funds be put aside for low-income housing. And I think that's an important resource that we need to utilize in taking over and trying to acquire some of these housing units that are going to convert.

To that end, the Governor's housing package tried to facilitate the use of that money by requiring that local agencies use it within a five-year period or it would go to another local agency that would use it for that housing

purpose.

The Department is going to sponsor legislation this year that's basically going to continue, build on that foundation and require that if they buy land with it, that they have to within three years obligate that land for housing purposes, or turn it over.

SENATOR PETRIS: How may low-income units have been produced in the last couple of years through State programs?

MS. HIGGINS: I'll find it; I have it. I don't know it off the top of my head, but I do have it with me.

I'll have to get you the exact number. I can tell you in terms of the amount of monies that we've put out over the years, and the number of contracts and awards that we've made, and how much those have increased. I don't happen to have the number of units in front of me, but I can get that for you, Senator.

SENATOR PETRIS: All right.

Relating to low-income, we can move up from the lowest income level and ask the question about affordability. It seems now to have reached a pretty high income level. People can't get housing because they can't afford it.

Are there any programs that we should put in place that we don't have to assist, other than what the Governor announced for first-time buyers?

MS. HIGGINS: Affordability is a general description and it has many faces, obviously. One of them would be the problem of first-time home buyers getting into the market. And I think that the Governor's announced program on that will

go a long way towards assistance in that area. It's a $2 billion program that's designed to meet the needs of both low-income and moderate-income first-time home buyers.

Another facet of the problem are low-income renters, making sure that they have safe, good places to live, and I think that the bond programs that have been initiated are very important towards meeting that need. It's incumbent upon the Department and it's a priority of mine to make sure that we implement that program very well.

SENATOR PETRIS: Do we have a goal, other than a dollar figure, of so many units per year?

MS. HIGGINS: It varies by program type in terms of how many units that each program will produce. A rehab. program's going to produce a different number of units for the amount allocated than a new construction program.

So, if you're interested in which units are leveraged in which program, I can provide that information for you.

SENATOR PETRIS: I'd like it for all of them.

MS. HIGGINS: Sure.

SENATOR PETRIS: If you don't mind.

Thank you, Mr. Chairman.

Thank you.

CHAIRMAN ROBERTI: Thank you.

Are there any further questions? Any opposition in the audience?

Then do I hear a motion?

SENATOR CRAVEN: So move.

CHAIRMAN ROBERTI: Senator Craven moves that Maureen Higgins' confirmation be recommended to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero; the confirmation is recommended to the Floor.

Congratulations.

MS. HIGGINS: Thank you very much.

[Thereupon the Rules Committee acted upon legislative agenda items.]

CHAIRMAN ROBERTI: Mr. James Gilleran, the Governor's Appointee as Superintendent of Banks.

And Senator Kopp is here to introduce Mr. Gilleran.

SENATOR KOPP: Thank you very much, Mr. President.

Mr. Gilleran, would you please come forward.

CHAIRMAN ROBERTI: Yes, please come forward.

SENATOR KOPP: Mr. President and Members of the Rules Committee, it's a personal pleasure for me to introduce

a friend, Mr. James Gilleran, who has been appointed as Superintendent of Banks, and who I present to you for confirmation.

He has a long history of commitment not only to profession but also to community. He is a veteran of service for three years in the United States Army. He has served as Trustee of Golden Gate University, which is a first-rate educational institute with several component colleges in San Francisco, which emphasizes education for working men and women.

He has served as chairman of the Audit Committee of our United Way. He has served as chairman of the Economic Literacy Council of California for the Northern Division. He has been co-chairman of UNICEF in San Francisco and was elected as Citizen of the Year for UNICEF in 1988.

He has been chairman of the Metropolitan YMCA in San Francisco, which obviously includes numerous branches of the YMCA, including three that are in the district that I have the honor to represent. He's been chairman of the National Conference of Christians and Jews.

He is a member of all professional societies that are relevant to his profession as a certified public accountant.

In his professional career, he served for more years than at any other time in his career with the highly regarded, well-known firm of Peat Marwick and Mitchell. He was instrumental in the development of the banking practice of that firm, in which he served for 25 years, and that

necessarily resulted in his involvement and experience with the banking business from the standpoint of regulation.

He lived and practiced his profession and participated in community affairs for several years in Los Angeles. In 1969, we in San Francisco were fortunate to have the benefit of his presence as he was transferred by Peat Marwick to become the Peat Marwick partner in charge of the auditing of Wells Fargo Bank, and he held that responsibility until 1974. In 1974, he became the managing partner of Peat Marwick.

In 1987, he departed to organize his own firm as President of the Commonwealth Group, which is located at 111 Pine Street. He was with them at 111 Pine Street, in the financial district of San Francisco.

He is extremely well-qualified, Mr. President and Members of the Committee. His integrity and honesty are of the highest order. His intelligence is unsurpassed. His knowledge of banking is unexcelled, and he is energetic, industrious and conscientious, and characteristics which I think we associate not only with certified public accountants, but with people who give more to their community than merely earning a living.

I'm pleased to present him to you and to recommend his confirmation.

CHAIRMAN ROBERTI: Thank you very much, Senator Kopp.

Mr. Gilleran, we will ask you the same question we ask all the Governor's Appointees, and that is: why are you

qualified to assume this position?

MR. GILLERAN: Thank you, Senator.

Point of personal privilege, I'd like to introduce my wife, Peggy, and my two daughters, Amy and Laura, who are with me today. I'm delighted that they could make it.

First of all, I think Quentin seated himself in a very detailed description of my background, but in 1964, the firm, not having any bank clients on the West Coast, decided that it was an industry in which there was going to be a lot of growth as far as CPAs were concerned, and they asked me to go back to New York and work with their bank clients there, and they had quite a few in the East -- bank auditing by CPA firms was well-known there but not here -- which I did. I worked in banks both in New York, and in Boston, and also in Chicago. I also attended a number of the firm's training courses in this regard.

In 1964, I returned to California and assumed the job of developing a bank practice when we had none. Fortunately, the banking industry was going under great expansion at that time, and I was very fortunate to be in a position to be a CPA who actually had some bank knowledge because of the training, and the practice grew dramatically.

Then in 1968, another fortunate event occurred for me, and that was the fact that the Bank Holding Company Act meant that banks that wanted to have a holding company would be subject to the SEC, and that would mean that the larger banks would require audits also. And it was in that connection that I was selected by Wells Fargo and I

transferred to San Francisco.

So, my exposure to banking has been professionally primarily auditing, and through that process I have extensive experience not only in working with banks, but in working with professionals who audit banks, and therefore feel I'm qualified to work with the professionals in the State Banking Department and to help them to develop themselves and to further develop the Department to be the outstanding bank auditing agency that it is and so recognized in this country.

So, I offer you my qualifications and hope I'm confirmed.

CHAIRMAN ROBERTI: Thank you, Mr. Gilleran.

Are there any questions? Senator Petris.

SENATOR PETRIS: Can you put in a good word for me with Senator Kopp? I'd like to have him recommend me for something sometime.

[Laughter.]

MR. GILLERAN: I want him to do my eulogy.

[Laughter.]

SENATOR PETRIS: Well, I won't be able to hear the eulogy.

I assume, since your family's here, that they concur with Senator Kopp's remarks.

MR. GILLERAN: I don't know. You might ask them.

[Laughter.]

SENATOR PETRIS: How long have you been in this position now?

MR. GILLERAN: Since July 5th.

SENATOR PETRIS: I have some questions to ask because of the jitters that we all have relating to the entire financial -- all the financial in our country. We're going through this savings and loan national disgrace. Taxpayers are picking up the tab. Deregulation, it seems to me, may have had a lot to do with that, which we did and the Congress did, but it didn't work. The marketplace that's supposed to take care of these things, as usual, didn't. The only competition that we seem to see in the S&Ls is who can out do the other in screwing the public.

So, now we're very nervous about banks, so I'd like to go into some of these things with you.

MR. GILLERAN: Certainly.

SENATOR PETRIS: First of all, in your work with Peat Marwick, I notice you did acquisitions and mergers.

MR. GILLERAN: That's what I was going with the Commonwealth Group.

SENATOR PETRIS: Yes.

I was reading about the Campeau bankruptcy today and yesterday, and I'm afraid there'll be more of those coming down the pike.

What role does the Superintendent of Banks play in those kinds of transactions involving companies in California? Do you do any monitoring or supervision of the role the banks play in the leveraging of the buy-outs? Does it come to your attention officially in any way?

MR. GILLERAN: Well first of all, we definitely get directly involved in terms of bank mergers themselves, and we

have to approve state bank mergers in California.

Secondly, in connection with the review of bank financial statements, we of course are reviewing the loans that are made in connection with leverage buy-outs. So, our relationship to those leverage buy-out loans is in connection with our evaluation of whether or not the bank is being safely and soundly run.

We do review those extensions of credit.

SENATOR PETRIS: Have any of those been turned down in the time you've been there?

MR. GILLERAN: Have any of the extensions of credit been turned down by the banks themselves?

SENATOR PETRIS: No. Has your Department interceded on the ground that a loan being made by a bank to fund an acquisition isn't sound?

MR. GILLERAN: We don't review loans that are made -- we don't review in advance loans that are made by banks. We review the loans that are made after they're made, and evaluate those loans in terms of their collectability. Then we take all of the information concerning the entire portfolio and come to a conclusion as to whether or not the bank's reserve for bad debts is adequate, and whether or not the financial statements fairly represent that.

SENATOR PETRIS: But that's after the fact.

MR. GILLERAN: That's after the fact.

SENATOR PETRIS: So if in your judgment it's a bad situation, what, if anything, can you do about it?

MR. GILLERAN: We can order the bank, if they

haven't already done so, we can order the bank to provide more in the way of reserve for bad debts. What that does is, if the bank requires a great reserve for bad debts, that reduces its earnings, and of course, if it reduces its earnings down below the point where the bank is unprofitable, then it has to increase its capital usually. So the effect of it is very dramatic if we believe a loan should be written off.

But our job is really to satisfy ourselves that the bank has the systems and the procedures to be able to make those evaluations themselves.

SENATOR PETRIS: So it doesn't jeopardize the bank itself, as opposed to looking at what happens to the acquired entity or the acquiring one.

MR. GILLERAN: That's right. Our focus is what is the effect on the bank.

SENATOR PETRIS: Well, I notice in the Campeau thing, the investment banker was pretty much in the same position. I think it was Dillon Reed. They got a fee for handling the transaction, the Campeau thing, but they also loaned the buyer 400 million, which they've now lost or stand to lose, so it's kind of parallel. They're the lending agency which somebody was supposed to review.

At any rate, well, sometime I'd like to discuss the whole range of activity that's been going on in the last few years in these hostile takeovers, but that's really not under the banking thing. It's more under your prior experience.

MR. GILLERAN: Right. I'd be happy to at any time, Senator.

SENATOR PETRIS: It doesn't affect your duties in this capacity.

MR. GILLERAN: Just to give me an awareness of the problem.

SENATOR PETRIS: Well, Senator McCorquodale is carrying a bill similar to the Governor's proposal to consolidate the overview by putting both the savings and loans and banks under one roof, and a couple others as well, some of the consumer groups and some of the real estate, so they can get a better look. He's also chairman of a commission that's been going for years to look into these hostile takeovers, and what affect they have on people, on communities, on consumers, on employees. And we've found some pretty bad stuff during the course of those meetings.

I'd like to go over a report that was made by our Cost Commission. We have a Senate advisory commission on Cost Control in State Government, which made a study of regulation of financial institutions in California. And the report came out February of last year. I don't know if you're familiar with that.

MR. GILLERAN: Was this the one that Senator Roberti was the chairman of?

SENATOR PETRIS: No, the chairman is a nonMember. It's not a Senate Committee. It's a committee created by the Senate to advise us on these things.

Anyway, they made a report with some recommendations in February of last year. The major recommendation had to do with supervision of these institutions. The committee felt

there just wasn't enough, it wasn't adequate, and that the State needed additional resources for dealing with problems that they perceived at the time, which included beefing up our staff at the State level. Not the Senate, but the regulators' level.

One of the problems was a pretty major disparity in the salary of State people who were supposed to be performing the regulatory functions with their private counterparts, and the tremendous turnover as a result. I guess the good ones were lured into going into the private sector, which is fine. So, a recommendation was made to improve that situation.

Has anything been done during the past year, the time you've been on it?

MR. GILLERAN: No, it hasn't, and --

SENATOR PETRIS: Do you plan to do anything?

MR. GILLERAN: I certainly would like to because --

SENATOR PETRIS: What would you like to do?

MR. GILLERAN: I would like to take bank supervision out from under the current salary guidelines. And just for instance, the area where it's probably the most gross at the present time is in connection with attorneys. The amount that we can pay to attorneys is drastically less than what private industry pays. And therefore, it makes it very difficult for us to get attorneys. We're now searching for, I believe, three. And that is a -- there's a gross discrepancy there.

But I understand that gross discrepancy occurs for all State departments, but the one I see where it's dramatic is in the Banking Department.

So I believe, in addition, the real competitor for us right now, for the future, is not so much private industry but other bank regulators. There is only so large a total bank examiner pool in the country, and the duties and responsibilities of the federal regulators are expanding dramatically. And the other federal regulators, the FDIC especially, have been able to get out from under any of the constraints on salary at the federal level.

SENATOR PETRIS: Are you losing people to them?

MR. GILLERAN: Well, we haven't seen it yet, and the reason is because it's only new. And our starting level salaries are not that bad. Where it starts to become the most dramatic is at the higher levels.

We have not seen the switching yet, and the stability of the State Banking Department has been very good. I think 50 percent of our employees have been with us over five years.

However, it definitely could be a problem for the future. One of the things that, of course, has helped the State Banking Department in retaining stability is the fact that we don't have travel outside of the state to any great extent; whereas, at the federal level, there's a lot of out-of-state travel. So, if somebody's trying to build a family, since we have four offices in the State of California, it's quite -- you can build your career around one locale. So, it's definitely an advantage there.

But the salary question is definitely a problem, and it's one that I would try to do something about. I have not

yet learned everything there is to learn about how these things are done in the State government. I could probably use a hand there.

SENATOR PETRIS: Is there anything in this current budget to help?

MR. GILLERAN: I was very successful in connection with the budget this year, and the Finance Department agreed with us in terms of our wanting $400,000 to get lap-top computers for our examiners in the field so we could tie their work directly into the computers at the -- at our offices. This is going to enable us to be much more efficient in our work, and it'll enable us to do more analyses.

We would hope that those -- that that would stand up in final review and that we would actually have that to spend on July 1.

SENATOR PETRIS: Have you also made a pitch for salaries?

MR. GILLERAN: We got approved what we asked for, you know, this time around. Those requests were prepared before I got there, of course, but we got approved.

We also get approved hiring eight new people to take care of what we see are the number of savings and loan conversions to banks by the spring. We've gotten indications from at least five savings and loans that they're interested in converting. We expect a total of ten by this spring, and we've gotten tentative approval to hire those eight people if those conversions hold up, and we think that they will.

So, as it is right now, I believe that we are

definitely getting the support that we need, and our staff is meeting, in statutory examination, requirements, and that we don't seem to be having any undue problems in processing applications, and we're accomplishing a number of very key special projects.

So, I would say at this time where we stand is that we're getting the support that we need, and the money that we need to do the proper job.

SENATOR PETRIS: Another area the Commission recommended was fraud, and insider trading, and abuse, and those areas, recommending that we do a more comprehensive job in monitoring them.

Have any steps been taken in that direction?

MR. GILLERAN: Yes. We got approval to hire a number of actual investigative-type people who will be on our staff and doing quasi police-type investigation work that will help us dramatically in the area of white collar fraud.

SENATOR PETRIS: Another area is in communicating with the federal people, working together and tying into their information system. They strongly recommended that.

Is that going to be done?

MR. GILLERAN: We did. We accomplished that, and we tied in to the FDIC reporting system as of the third quarter, and therefore, not only have we increased our information source, but we've reduced the burden on the state banks by eliminating their need to file duplicate reports, or special reports, for the State Banking Department. So, we're tied into the same information system.

One thing that we are about to accomplish, we hope it's going to be accomplished this quarter, is to sign treaties with all of the federal regulators. This is something that is becoming of much greater importance because FIRREA, the newly passed federal law relating to the savings and loan problem, has a section which relates to the financial institutions within a holding company bearing the burden if one of the financial institutions goes down. Therefore, if a bank is owned by a holding company that owns other financial institutions, say, outside of the State of California, that we want to assure ourselves that as State regulators of state banks in California, that we know what the potential impact is on our banks if a bank, say, in Arizona, or somewhere else, goes down. So, we are going to sign treaties with all the federal regulators, hopefully, this quarter to be able to make sure that bad news travels fast. We haven't had that ability in the past.

SENATOR PETRIS: Do you feel you have enough personnel to do the job?

MR. GILLERAN: I do, sir.

SENATOR PETRIS: And they're adequately paid?

MR. GILLERAN: At the current time, I believe that we are light at the upper levels, and we're definitely light as far as the attorneys are concerned, but it hasn't impacted us yet, but the potential is there to impact us because the federal regulators are hiring so many people. We haven't seen it yet.

SENATOR PETRIS: They also recommended all licensees

be examined at least once a year, and that the problem banks be examined twice a year. I don't know what the rate is and what it was before.

Has that recommendation been adopted?

MR. GILLERAN: No. The statutory requirement is that every bank be examined once every two years, but --

SENATOR PETRIS: You're not prevented from doing it more often?

MR. GILLERAN: No, no.

We examine banks which might be classified as problem banks as frequently as every six months. So, we have not increased our schedules to every year, nor have we any indication that it's required.

SENATOR PETRIS: Has there been a rise in the number of problem banks in the last couple of years?

MR. GILLERAN: No, it's been the opposite.

SENATOR PETRIS: It's going down?

MR. GILLERAN: The state banking system in the last several years has been operating extremely well. We've only had to close one bank in the last two years, and that was just prior to December. We had to close United Community Bank in Los Angeles.

But the number of problem banks has been diminishing, and the state banking system is working at an all-time high profitability level, and we feel very good about the way the system is operating right now.

SENATOR PETRIS: Interstate banking seems to be expanding, seems to be inevitable it's really going to go all

out in the next few years.

MR. GILLERAN: January 1, 1991 is the date.

SENATOR PETRIS: That's by statute; isnt' it?

MR. GILLERAN: Correct.

SENATOR PETRIS: Some people say that's likely to evolve to accelerate a lot more mergers of banks. They're going to be gobbling each other up again, leaving a few small ones that maybe aren't desirable; if they were, they'd be bought up.

So the question is raised, what about the health of those that are left out?

MR. GILLERAN: Well, we just haven't seen the bank merger activity that has been anticipated. In fact, there's really been only one bank, a Michigan bank, in anticipation of January 1, 1991, that has made a deal with a bank here in California.

Part of the reason why that's true is because most of the major Eastern banks are already here in some degree. City Corp is here, of course, to a very major extent; they probably have 20,000 people in California because of City Corp Savings and other activities. Chase Manhattan is here in one way or another.

I'm sure that going forward that these Eastern institutions may purchase other banks in California. We certainly haven't seen it.

However, internally within the Department, we feel that each one of these acquisitions may just form the potential for new state bank formations. What happens is, is

that when a bank is acquired, if in fact the current officers are let go, because they are an experienced group and they have strong local knowledge and exposure, what they do in many cases is that they're interested in forming a new bank. They'll put together a new group and form a new board of directors, raise new capital, and come down to get a -- try and get a new state bank charter.

And with the population expansion the way it's predicted here in California in the next ten years, the demographics in California will probably support it.

SENATOR PETRIS: Some people believe when you get a lot of these mergers, that some consumers will be left out; in the rural areas, for example --

MR. GILLERAN: Yes.

SENATOR PETRIS: -- the low-income areas have a tough enough time now and have to fight to get bank services.

Do you see that as a possible downside with a lot of these mergers with interstate, if they come to pass?

MR. GILLERAN: We certainly haven't seen it yet.

I think, of course, there'll be those areas that will be left out. However, I don't anticipate that it's going to be, you know, to any great extent, myself.

SENATOR PETRIS: You don't see that as a problem?

MR. GILLERAN: No, I don't.

SENATOR PETRIS: What about the foreign banks? Everybody's concerned about foreign banks, not only from Japan but many other places, and the question of reciprocity.

Can you comment on the lack of reciprocity in some

countries that do not enable our people to go over and do business in their countries?

MR. GILLERAN: Well, of course, it's a real concern to me. Let me comment first about foreign banks.

The foreign banks, you know, represent something -- about 30 percent of the total banking activity in the United States, which is comparable to what it is here in the State of California. So, the State of California is no different than the rest of the country in overall totals. And the predominant share of that foreign bank activity is Japanese.

And, of course, the reasons for that are that, number one, the Japanese savings rate is much higher than the U.S. savings rate. The Japanese have experienced a very favorable foreign accounts trade balance over the last 20 years. And the United States banking system has been completely open to them, and they have taken advantage of it.

I believe, as a citizen of the United States, that this is something which is very favorable to us. It represents real capital infusion into the United States, which is good for us, and it's good for our expansion, and it's good for the State of California.

I don't think it's anything that we should be frightened of or afraid of, and I believe that it will continue. I think it's important for our growth that it does continue.

So, it's the underlying economic factors that have given rise to the Japanese being as interested in the banking area here in this country as they are.

As far as reciprocity is concerned, I don't think all of the factors which, at the national level, have made it so that country by country, we have not been as aggressive as I think we should have been in getting reciprocity there. I mean, we are, as an industry, the United States is very minor in Japan compared to the way Japanese are here.

I believe it is something that we as a country should fight for, you know, dramatically. I don't know what can be done on the state level to increase that, but I do know it's something that we should fight for.

SENATOR PETRIS: I just recall that prior to the ascendancy of the Japanese banking industry, some of our banks were going all over the world. The Bank of America went into Russia, went into every European country, and a lot of other places.

But that drive for going into Japan, particularly, seems not to be so successful. I understand that they restrict the range of activities, whereas we have no restrictions. Once they're chartered, they can do whatever any other bank can do here, but our people can't. They're highly restricted.

Since it is a convenient help to our business people who are over there, it seems to me we ought to push that. I'm glad to hear you say that.

MR. GILLERAN: Oh, I agree.

SENATOR PETRIS: Should we have a public policy encouraging our people to save more? Or, should we encourage them to spend so they can buy more goods and create more jobs

that way?

MR. GILLERAN: I think that the lack of savings in this country, you know, is a problem for us. And I think, however, in recent reports that I've read, there's been an uptake in savings.

I think that if the United States is going to be competitive worldwide, a number of changes have to be made on a national level to be able to support our banking system, including taking a look at the kinds of services that banking is allowed to render. Not only do we have 1991 coming up, but in January, 1992, as you know, they're forming a Common Market. So, there's the whole question of how American banks will be allowed to compete on the Common Market.

There's going to be one Common Market bank charter, and that charter will allow any bank to operate anywhere in the Common Market without the approval of the host country. American banks will have the same rights over there as the Common Market will have, as long as the Common Market banks can have the same services over here.

So, I believe on a federal level, we're going to have to face up to bank services.

SENATOR PETRIS: Don't they have that now?

MR. GILLERAN: Well, the European banks are extensively involved in securities, and many of them are actually owned commercial organizations. So, the European banks are quite differently organized than the American banks.

SENATOR PETRIS: That's one of the questions I wanted to asked you, about the extension of services.

Are you in favor of that?

MR. GILLERAN: Well, I am in favor of extension of services. I am also in favor in strong regulation.

I think if we've learned anything from --

SENATOR PETRIS: From the S&Ls.

MR. GILLERAN: -- from the S&Ls, it's that any time that you increase services, you've got to not deregulate mentally from the regulation point of view.

SENATOR PETRIS: By services, we don't mean better service. We mean variation --

MR. GILLERAN: Variation of services, right.

SENATOR PETRIS: Selling securities, and real estate, and all that stuff.

MR. GILLERAN: Yes. I believe it's all positive, and I think that the experience of the state banks in California in the real estate area has shown that it can be done effectively .

When the savings and loans were deregulated, they were deregulated across the board. They were allowed to make loans to one borrower up to 100 percent of their assets, out of the state, and they were able to lend 100 percent on the value of the property.

Now that, in itself, is a very dangerous practice because that means that nobody has any financial stake there except the financial institution.

In banking, it's never gotten, I mean, that liberal. Therefore, the reserves and the margin for error is greater in banking than it was ever structured to be in the savings and

loans after deregulation.

So, I am in favor of increasing services. So, when the State Legislature here in California passed the law allowing state banks to make real estate investments, they gave the supervision of that to the State Banking Department and said that we had to satisfy ourselves that the bank was qualified to engage in those real estate transactions: had the staff to do it; they were operating well without the real estate investments; and they had adequate capital.

So, of the 270, approximately, state banks we have, only about 70-plus have those real estate powers. And whereas the State Legislature gave those banks the opportunity to invest 10 percent of their assets in real estate investments, in fact they've invested less than one percent, and mainly in single-family housing, which the legislature, we believe, intended.

So, in the banking arena, it was very conservatively applied. They're doing it well. It's adding to the profit, considerably to some of the banks that are doing it, and it's well supervised and well regulated.

Now, I think that's an example of when we give banks increased power, increased service power, that that's the way it should be done. That's a good model.

SENATOR PETRIS: Are they allowed to take equity positions in companies now?

MR. GILLERAN: No.

SENATOR PETRIS: Other than real estate?

MR. GILLERAN: No.

SENATOR PETRIS: Do you favor expanding to that, too?

MR. GILLERAN: Well, I am -- I believe that what we have to sort out is what is it that we want to allow financial institutions to invest in with public deposits insured by the government.

I have a much different attitude concerning what you can invest your money in if you're taking public deposits versus going out and raising normal investment-type money to do it. If you're investing the public's money, then I don't believe that you should taking the kinds of risks that, perhaps, that investing in some commercial organizations might imply.

SENATOR PETRIS: European banks do that all the time.

MR. GILLERAN: They do, but they do --

SENATOR PETRIS: You borrow money from them, and they own 25 percent of our business before the thing is over.

MR. GILLERAN: Right.

SENATOR PETRIS: And if we want to go in there, we have to allow them to come in here and do that.

MR. GILLERAN: Exactly.

I would like to see those kinds of activities done in subsidiaries that are capitalized on their own, and the money that is raised to put in those kinds of ventures comes from the investment pool rather than the deposit pool secured by the FDIC.

SENATOR PETRIS: Would that be acceptable to the

Common Market?

MR. GILLERAN: I think so.

SENATOR PETRIS: Is it desirable for us to go in there?

MR. GILLERAN: Very. The EEC represents 320 million people. I mean, they're 100 million people larger than we are. It's going to be one of the largest markets in the world. It's one that we have to be in.

SENATOR PETRIS: Last subject is the bill I referred to earlier by Senator McCorquodale. I don't know if it's in yet, but I imagine you're familiar with the proposal because the Governor has one similar to it.

Is that a good thing for us to do, bring all the regulation under one roof for the various financial institutions?

MR. GILLERAN: Well, there are only seven states that aren't operated that way, and California is one of them. All the rest of them have a consolidated financial institutions department.

Having met a number of the state regulators already, I can tell you the feedback is positive, and it seems to be working well. I believe it makes sense from the standpoint of operations, and it makes sense from the standpoint of delivery of service. It's not one that appears to be popular with a lot of constituencies.

SENATOR PETRIS: Why not?

MR. GILLERAN: Because they are used to being served as they are now, and change is always difficult.

SENATOR PETRIS: That's why agriculture doesn't want to go under the Health Department on pesticides. They want to stay under Agriculture. That's human nature.

What are the disadvantages, if any, of a consolidation like that?

SENATOR PETRIS: Well, you know, some of the constituencies wonder whether or not, as a larger Department, we would be as responsive to their needs. They wonder whether or not their access would be as great. They wonder whether or not if one segment of the industry got into trouble, that that would mean that examiners would be siphoned off from their area, and they would not be getting the attention that they should.

All of these are very valid concerns, and I have found to date that there is no group out there that is more interested in having a strong State Banking Department than the bankers themselves. They really want to have a strong State Bank Department, so these are valid concerns and ones that have to be debated.

SENATOR PETRIS: What about from the consumers' standpoint, consumers' interests. Would that improve things for consumers?

MR. GILLERAN: Well, I would say that anything that enables the Department to function better is good for the consumer, since our whole thrust is to protect the consumer. When you look at it, the job of the --

SENATOR PETRIS: That's what the statute says.

MR. GILLERAN: That's right.

The whole job of the State Banking Department is to make sure that the banking system is healthy, and that when the consumer goes in to pay for a banking service, that's the last charge he pays.

As we see in the savings and loans, we as taxpayers have had to pay a lot more for our savings and loan services.

SENATOR PETRIS: We haven't stopped paying yet.

MR. GILLERAN: Right.

SENATOR PETRIS: What about junk bonds? Do our state banks have authority to deal in junk bonds?

MR. GILLERAN: Not when we become aware of it. The only time they do is when they make a mistake and buy some, because they shouldn't, and as soon as we find out that they do, we tell them to sell them. Get rid of them.

SENATOR PETRIS: You're still opposed to that?

MR. GILLERAN: Absolutely. They're not investments.

SENATOR PETRIS: What are they?

MR. GILLERAN: Well, typically, an investment for a financial institution, in our opinion, is one where that money can be counted on absolutely to be used for liquidity.

If you are putting your money in an instrument where there is great doubt that when you get around to the time of selling it, the value isn't there, you can't even sell it at all, that doesn't become a valid investment.

The problem with a bank making an investment in something like a junk bond, their ownership of the percentage of the securities of that company is so small that they themselves can do very little to help that company get out of

the problem that they're in. Whereas, if they're making a loan to a company, they've evaluated it from the standpoint of, you know, even if the company isn't able to make their plans, they can carry them for a while, help them get out of their problems.

With a junk bond, there's nothing you can do with them but write it down.

SENATOR PETRIS: If there were a greater push for deregulation, would you support it for the banking industry?

MR. GILLERAN: I would be very open to increasing services, but against the concept of deregulation, which means the government backs off as far as supervision. I think it should be the opposite.

I think the services should definitely be increased, but we should be given even greater powers to make sure they don't get in trouble.

SENATOR PETRIS: Thanks very much.

MR. GILLERAN: Thank you, sir.

SENATOR PETRIS: Thank you, Mr. Chairman.

CHAIRMAN ROBERTI: Thank you, Senator Petris.

Are there any other questions? Senator Mello.

SENATOR MELLO: I wanted to ask you a couple of questions, one about your activities after you became appointed Superintendent of Banks, which in our record here shows you were appointed on the 20th day of June, 1989, and the effective date was July the 5th, 1989.

You wrote me a letter, and I guess other Members, regarding your having served as Chairman of the San Francisco

County Republican Central Committee. Further research shows that after your appointment in June, effective date of July, on July 21st, you sent out a letter with your signature as well as other people's, soliciting funds for a fundraising event, $1,000 per person, which was scheduled for October 17, 1989.

The question is, where any of these invitations sent out to people that you regulate, like banks and bankers, and others in the financial business?

MR. GILLERAN: They may have been and probably were, Senator. That was -- it was sent out to a general list of Republican contributors.

After that letter went out and it was brought to my attention, I never allowed my name to be used in such a manner again for any solicitation.

SENATOR MELLO: You say brought to your attention, but you signed the letter dated July 21st, so you must have been aware of it going out.

MR. GILLERAN: It was brought to my attention that this could be conceived or perceived as a conflict of interest. After that was brought to my attention, I ceased doing it.

SENATOR MELLO: Later you resigned from the Central Committee.

MR. GILLERAN: I resigned as Chairman.

SENATOR MELLO: Later on that year.

Then later on, you also sent out your Republican newsletter in the fall of 1989 with your picture and "Message

from the Chairman", which went on to describe the activities.

MR. GILLERAN: Yes, sir.

SENATOR MELLO: The reason I'm asking these questions, it would appear that whether it be Democratic or Republican, that's not the issue. But a person who holds such an important position as you, Superintendent of Banking, that has regulatory control over all the State chartered banks in the State of California, don't you think it would be inappropriate to solicit any of these firms that you have jurisdiction over as far as regulation on behalf of whatever party you belong to, with your signature on such a notice?

MR. GILLERAN: I now see that that would be a problem, and I have not done it since that first letter, and I have resigned as Chairman.

SENATOR MELLO: Okay.

CHAIRMAN ROBERTI: I don't think there was anything against the law in the letter, but the perception is one which, I think, the Superintendent has indicated is one he's not going to engage in again. So, we take you at your word.

MR. GILLERAN: Yes, sir.

CHAIRMAN ROBERTI: I think Senator Petris really covered the vast majority of questions that we all had.

Are there any other questions?

SENATOR MELLO: The only one I have, on the junk bonds, have you sent a letter off to the banks stating that if they were to engage in the sale -- or have you sent out an alert letter telling them to stay away from the junk bonds?

MR. GILLERAN: We have not sent out a letter because

we only know of one instance where a bank has invested in those junk bonds, and they did so because they felt that they could, but they have been told that they can't.

We are doing some further research in that area, but we don't -- we just don't believe it's a problem in the banks, but we are considering doing that.

SENATOR MELLO: Then the last issue is, I had a chance to talk to you, and I expressed my concern about banks falling the same way that savings and loans have. I think we have far too many banks right now. Even with the increased population, the banks are being more automated with ATM machines and so forth, and we really don't need, in my opinion, a lot of new branches.

And now interstate banking will become effective, I guess, in 1991 when the deregulation takes place.

Do you foresee just a lot of increase in the number of banks and branches that we're going to have in the state in the next five years or so?

MR. GILLERAN: I don't think so. I think that the opposite will occur. There will be some consolidation.

SENATOR MELLO: Well consolidation, what's happening is that foreign entities are buying up our banks, and I think the little Mom and Pops, they start out to provide a lot of community service, but they soon get bought out by larger banks, and it just seems like banking is becoming a business only of the big major banks.

I come from small communities, and I think what we've lost there is what we once had, and that is a well-known

community bank that you could walk into, and they would know us. Rather than now, you walk into a bank and you're a number with them.

So, I would hope in carrying out your duties, that you really take a hard look at new branches and new banks wanting to start out, and really determine that there's really a need for them because of circumstances that justify an expansion.

I know there haven't been many new banks in the past, but we should just put a moratorium on them, I think, for a while.

MR. GILLERAN: Senator, you've made an excellent case, really, as to why we here in California should participate and fight hard for the state banking system.

Here in California, of the 270 state banks, they are mostly the community banks that you talk about. There's a couple of large state banks: First Interstate Bank and Union Bank. There are almost 100 more state banks in California than national banks, but the national banks are the big banks.

Now, the reason why this is important to California is that our expansion here in this state is going to be greater than any place else in the United States. We have to have the ability, in my opinion, to be able to determine what kind of banking services that we can offer to the citizens of California. The state banking system does that for us.

I can tell you that the backbone of the state system is the community bank, the very one that you're afraid of gobbling up. I don't think that it's going to occur.

I believe that there'll be some consolidation, but I think we'll always have a very healthy state banking system.

SENATOR MELLO: Thank you.

CHAIRMAN ROBERTI: Thank you, Senator.

Is there any opposition in the audience? Is there anyone else who would like to add a word of support?

Then do I hear a motion?

SENATOR CRAVEN: Move Mr. Gilleran's confirmation.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Gilleran's confirmation as Superintendent of Banking be recommended to the Floor.

The Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to nothing; confirmation is recommended to the Floor.

Congratulations.

MR. GILLERAN: Thank you very much, Senators.

[Thereupon this portion of the Senate Rules Committee hearing

was terminated at approximately

3:45 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of January, 1990.

EVELYN J. MIZAK
Shorthand Reporter

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SACRAMENTO, CALIFORNIA

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2:00 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

WILLIAM R. CHANNEL, Member, Board of Directors
Hastings College of the Law

GARY MICHAEL COUTIN, Graduate
Hastings College of the Law

BION GREGORY, Legislative Counsel
California State Legislature

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointee appearing today, Justice William R. Channel, Member of the Board of Directors, Hastings College of the Law.

Justice, we'll ask you what we ask all the gubernatorial appointments, and that is your qualifications for this position, although that may be, in some ways, self evident.

SENATOR BEVERLY: As I remember, at the prior hearing we had extensive testimony from the Judge. It was a legal question you held it over for.

CHAIRMAN ROBERTI: Senator Petris, you were the one who asked.

SENATOR PETRIS: Yes. I don't know if we got into the questioning --

JUSTICE CHANNEL: I would incorporate my previous testimony.

CHAIRMAN ROBERTI: Please; so incorporated.

Now, Senator Petris, you had a question. I don't think I was here.

Senator Petris, you had a legal question, however.

SENATOR PETRIS: That comes later.

I'd like to ask about some policy things.

We've had an awful lot of flak over the past several years about the College's handling of its property, real property. It's been accused of being a slum lord. It's been accused of evicting a lot of tenants who had no place to go,

and stuff like that. And the Auditor General made a pretty critical comment.

So, I just wanted to ask you about the College's role as a landlord. Not as a law school; I'm pretty familiar with that, but as a landlord.

Can you tell us what the current situation is in that ongoing conflict?

JUSTICE CHANNEL: Yes, Senator.

I'll just start out and say very briefly that I have found out since the last time I was here that it's harder to become and be a Director than I anticipated that it was, and I'm finding out that Hastings, as you correctly point out, with certain members of the community has a very bad reputation. And I found out much more about that after I became a Director than I knew beforehand.

SENATOR PETRIS: Do you still want to serve?

JUSTICE CHANNEL: I was going to say, I'm still willing and anxious to meet this challenge, but there are ongoing discussions about that very subject.

I can tell you that no decision has been made by the Board, but that the Board is acutely aware and conscious of our responsibility, not only as -- to the school, but to the other members -- the people that live in the community, in the area, that Hastings owns; people that are tenants there, people who are residing there.

And I can say this: even though there's been no decision made as to what's going to happen to the properties that Hastings owns that I'm sure you're referring to, that we

are not intending to disregard our responsibility to all the community.

SENATOR PETRIS: How are they using the property now? Are they still renting out to tenants?

JUSTICE CHANNEL: Yes, and there are, due to the earthquake, four buildings -- the City has, in essence, agreed that it was not economically feasible to rebuild them. There were no apartments or hotel rooms in that part, and they are being demolished. And the -- there's going to be a parking area for students and faculty where those four buildings are.

SENATOR PETRIS: A park?

JUSTICE CHANNEL: Parking, a parking lot for members -- students and faculty.

And the rest of the use of the property is as it was.

SENATOR PETRIS: So, does that leave the College with any residential income property?

JUSTICE CHANNEL: Well, there is a large part of the block that very little of it is being used for residents right now, but it is residential property, it had been, and that is the portion of the Hastings property that ongoing efforts and ongoing Members, ongoing discussions with various members of the community are taking place with regard to what we should do with it.

San Francisco Courts, for example, want to have a building there. And then there's the question of replacement housing, and how much, and where.

SENATOR PETRIS: So, that's kind of in limbo, I

SENATOR PETRIS: So, that's kind of in limbo, I guess?

JUSTICE CHANNEL: That's -- well, not in limbo, but it's the subject of ongoing discussions right now.

SENATOR PETRIS: Still pending.

JUSTICE CHANNEL: Yes. No decisions.

SENATOR PETRIS: Question on employer-employee relations.

I understand that the School has never adopted any kind of a parental leave policy, which other universities have, U.C. especially.

Has there ever been any discussion of that in your board meetings?

JUSTICE CHANNEL: There has been no discussion with that, though I know that we had a claim made by a member of our faculty at Hastings that has been resolved to the satisfaction of both sides, and our general counsel is here.

But I cannot answer your question, Senator, except to say that there hasn't been any discussion in any board meeting that I've attended.

SENATOR PETRIS: Maybe it started before you came on board.

There's a faculty member who requested maternal leave. That was rejected. That was based on institutional needs of Hastings. That was appealed, so the Dean appointed a faculty committee, which recommended that parental leave be granted, which the Dean promptly rejected.

It seems kind of harsh to me, in this day and age.

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It seems kind of harsh to me, in this day and age. You can get maternal leave if you're going to have a baby

from just about any employer.

JUSTICE CHANNEL: I can report to you, Senator, that I feel certain from your description that that is the case that I now know has settled.

SENATOR PETRIS: It's settled? Well, the settlement, as I understand it, was to give her a research leave. I don't know what she's going to research; baby foods, maybe.

Can we ask General Counsel to come forward and clarify?

JUSTICE CHANNEL: If I can ask -- that's a good idea, because she can give you a better answer than I can.

SENATOR PETRIS: I'm just asking because this is a case that's been brought to our attention, but I'm really concerned about the overall policy of maternal leave, parental leave.

MS. KHACHADOUR: Maternal leave, and the fact that the University of California is the lead that we would follow, and there was a disagreement with the interpretation of the leave policy of the University.

SENATOR PETRIS: What is the Hastings' policy?

MS. KHACHADOUR: It's the same as the University. We had a senior administrator from the University giving us advice as to what the University leave is.

SENATOR PETRIS: Did they recommend rejecting this particular --

MS. KHACHADOUR: No, Senator.

What -- I hate to mention the specific case, since

there is no name mentioned -- but what the professor wanted was a leave with pay for a semester, four months after the birth of the child.

There is no policy in the State of California to give a leave with pay, anywhere. The State of California does not provide it. No one else has ever provided it. There is leave without pay provided.

SENATOR PETRIS: Is leave without pay done for other applicants?

MS. KHACHADOUR: Oh, leave without pay would always be granted. Particularly, faculties would have the right to do that without much reason, so long as some replacement faculty can be obtained for the courses.

We now have a policy, it's been adopted, and all of that took place, really, before Justice Channell joined the Board. That is why he doesn't have much familiarity with that case as he should otherwise have.

SENATOR PETRIS: So, on the basic parental leave, it's the same as others?

MS. KHACHADOUR: It's the same as the University of California.

SENATOR PETRIS: In all cases, it's without pay?

MS. KHACHADOUR: Well, in this case, the professor, in fact, was relieved of all teaching duties and did some research assignment, and received full pay.

You do not provide that generous a benefit to your employees, Senator.

SENATOR PETRIS: Say that again?

MS. KHACHADOUR: I said, I don't believe that the Legislature provides as generous a parental leave as we did for its own employees.

SENATOR PETRIS: I want to pass that on to the Chairman of this Committee so we can reconsider our policy.

MS. KHACHADOUR: No, no, but this is leave with pay, and we follow the U.C. procedures. And we did, in fact, seek advice from U.C. as to what was the proper treatment of the case would be.

So, this is not something we did on our own, without guidance from other sources.

SENATOR PETRIS: That policy was established, I guess, after the usual procedural steps that had to be taken?

MS. KHACHADOUR: Right, right. Those policies of U.C., both for faculty and staff, are usually followed unless the College, for its own peculiar needs, adopts a policy of its own with some differences. There's some reason, sometimes, to have different policies than U.C. But other than that, we follow the U.C. policy in that instance.

We provided the father with a leave -- with a relief of teaching duties for a semester because he wanted to be participating in the early months of care of his newborn, with pay.

SENATOR PETRIS: All right. Thank you very much.

MS. KHACHADOUR: Thank you, sir.

CHAIRMAN ROBERTI: Thank you, Senator.

Any other discussion or debate?

Is there any opposition in the audience? Please

come forward.

MR. COUTIN: My name is Gary Michael Coutin. I'm an alumni of Hastings, Class of '72. I'm also a person who was displaced from property that's owned by Hastings, called the West Block.

Who judges the judges? Over 2,000 years ago, Plato asked the question: who guards the guardians? Herman Melville said 200 years ago: who's left to doom when the judge himself is dragged before the bar?

For the last six years, I've been asking who judges the judges? And the conclusion I come to is that no one does, that we live in a judicial dictatorship, but only the people are either not intelligent enough to understand it, or they lack the courage to do anything about it. The people surrender their principles to expediency and superior financial or political power.

The proposed action today raises the question: can the Rules Committee of the Senate confirm William Channell to the Board of Directors of Hastings College? And the answer is no, because the power to confirm exists only by virtue of a statute which Legislative Counsel of this body, and Hastings College itself, acknowledges to be unconstitutional.

The California Constitution, Article IX, Section 9, bars the Legislature of the State of California from altering the governance of the University of California or any part thereof by ordinary legislative enactment.

The United States Constitution, Article I, Section 10, bars the sovereign from altering charters to

private trusts once those charters have been granted.

The action which the Senate proposes to take today is unconstitutional, illegal, and corrupt.

It's unconstitutional for the constitutional provisions I've cited.

It's illegal because the California Supreme Court, in 1886, held that the Constitution of the State of California bars the Legislature of the State of California from altering the governance of the University of California by ordinary legislative enactment. The case is Hastings versus Hastings; it involved the founder of the College.

The United States Supreme Court held that sovereigns cannot alter the charters of private trusts once granted under the contract clause of the federal Constitution; the case is Dartmouth College.

But I think the more interesting part is the fact that the action proposed today is corrupt. That is, that the appointment of William Channell to the Board of Directors of his alma mater constitutes a quid pro quo payoff for his fixing a case which would have sent the Law Department of the University of California into bankruptcy, and would thereby have opened an inquiry into the century-old scandal involving the defective organization of the University of California.

Commencing as early as 1973, the Board of Directors of Hastings College began to secretly and illegally divert funds from trusts restricted to scholarships into speculative ultravirus real estate ventures. The diversions continued for almost seven years and remained secret from the public for

over 13 years. This occurred because no public body audits or holds Hastings College responsible. The Regents don't audit Hastings because they claim it is the responsibility of the Legislature. The Legislature doesn't audit Hastings because they believe it's the responsibility of the Regents.

The unlawful real estate transaction aimed not at the legitimate educational mission of the College, but at a profit-making venture which could succeed only if Hastings College of the Law could detach the West Block from the tenderloin and destroy its residential uses to make way for commercial uses. Hastings College of the Law knew that it could profit from the transaction by selling the stripped down property back to the judges for courtroom purposes. It knew this, because judges who went to Hastings were playing a key role in focusing the judicial acquisitions on the Hastings site.

The only real obstacle to the plan lay in eliminating the residential users and destroying all relocation rights. This corrupt scheme required the corrupt collaboration from judges; namely, the alumni of the University of California and Hastings College of the Law.

In 1982, San Francisco Superior Court Judge Dearman ordered Hastings College of the Law to provide 410 units of comparable low-cost housing as relocation benefits due to the class of displaced people. Now, if anything, his ruling actually understated the damages owed by -- owed in this case.

Hastings College of the Law cried out to the alumni-dominated Court of Appeal that this would bankrupt the

College. Channel and his University of California cronies then overturned Dearman's decision and reduced the relocation obligations to zero. This case was a fix, and I'm going to explain why it was a fix.

This case relies on the fact that no showing ever occurred that Hastings College of the Law had displaced any person and had not provided relocation benefits in full. However, Hastings College of the Law displaced me and hundreds of other people without providing them full relocation benefits. If any single displaced person came forward to disprove the keystone of the basis for the reversal, that person could constitute the hook upon which to hang the benefits for the entire class. In short, this would leave -- render Hastings College of the Law bankrupt.

Channell and his University of California buddies prevented the displaced people from interfering -- intervening in their own name in this litigation, as it would negate the basis for the reversal. In short, the Court held that the displaced people had no rights because they had no roots. That they were simply transients on their way somewhere else, so they were -- they weren't being displaced, because they were already on their way somewhere else.

The cover-up runs to the benefit of the Regents of the University of California, because the California Relocation Act, Government Code 7260 and following, does not name Hastings College of the Law. It names the Regents of the University as the obligor.

Hastings College, through its alumni, controlled

plaintiff's counsel as well as its own. Channell participated in the decision to cover up for his alma mater and now claims the right to sit on the Board of Directors of its Law Department as the quid pro quo.

So, in conclusion, what the Senate Rules Committee intends to do today is unconstitutional, illegal, and corrupt. This same Senate Rules Committee boots out of office one its own colleagues this week, yet places at the head of the largest single source of lawyers in the United States an individual so corrupt as to make the former Senator look like Mother Teresa.

Demosthenes will require a bigger lantern to find an honest soul in Sacramento.

SENATOR PETRIS: Excuse me. That was Diogenes.

MR. COUTIN: What?

SENATOR PETRIS: That was Diogenes, another fellow. It's a different relative of mine.

MR. COUTIN: Yes, Senator, thank you for your correction.

I'll answer any questions.

SENATOR MELLO: Let me ask.

CHAIRMAN ROBERTI: Senator Mello.

SENATOR MELLO: I'll take a little bit of the bait.

You say you're an attorney; right?

MR. COUTIN: I went to Hastings.

SENATOR MELLO: I've never heard such allegations made against this Rules Committee by anybody.

I think you ought to be disbarred.

MR. COUTIN: Thank you.

SENATOR MELLO: If it wasn't for the fact that we're sort of immune from it -- people can liable the heck out of us, we can't do much about it.

But I think you just presented some very distasteful testimony that, to me, has no merit at all.

MR. COUTIN: Do you intend to follow the law and the Constitution?

SENATOR MELLO: Follow the law, the burden is on you to prove we're corrupt, this is unconstitutional, and all the charges that you've made.

MR. COUTIN: Your Legislative Counsel's already said that the power to confirm is not in the Senate; that the bill of 1980 is unconstitutional.

SENATOR MELLO: I wasn't around in 1980, and neither were you.

MR. COUTIN: But today you're going to act under the Act of 1980, and you only have the power to act if the act is constitutional. So today you will do an unconstitutional act.

SENATOR MELLO: That's according to you. You're not my attorney.

MR. COUTIN: It's not my opinion. It's Legislative Counsel.

SENATOR MELLO: Thank goodness you're not my attorney.

I take the bait once in a while, and I have to react because I can't sit here and let people make charges that are just off the wall.

MR. COUTIN: Then you choose to disregard the advice of your own counsel, Legislative Counsel.

SENATOR MELLO: I'm responsible for my own actions and my own vote.

MR. COUTIN: Absolutely.

SENATOR MELLO: And I listen to Counsel; I listen to people. And I'm just dismayed when I have to listen to you for that period of time.

Thank you.

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: I don't know if I'm ready yet.

We have the basic underlying attack, and this whole thing was put over at my request because I thought Mr. Coutin had raised some good points in his prior arguments regarding the Legislative Counsel's opinion.

So, before this is over, can I ask Counsel to come forward and answer some questions?

CHAIRMAN ROBERTI: Very good. Thank you, Senator.

SENATOR PETRIS: There may be others who want to testify.

CHAIRMAN ROBERTI: Are there any other people in the audience who wish to testify in favor of the appointment, in opposition to the appointment?

Bion Gregory, why don't you come forward.

SENATOR PETRIS: I might way by way of preface that I appreciate the legal essays and briefs, you might call them, that Mr. Coutin has provided us over the couple years now.

We also had a lot of material from a law student,

Mr. Ballantine, who's one of the editors of the Law Review, who differs diametrically with Mr. Coutin's position. He claims we have every right, and he disagrees with our Counsel, we have every right, based on prior decisions and statutes and everything, to govern Hastings, and they don't have the immunity that U.C. has because the affiliation has never really been completed.

Senator Mello, I don't think Mr. Coutin -- I think the language you use is pretty strong. I don't think he means that we're corrupt in the sense that the normal meaning is given to that word. I think this relates more to the unconstitutionality.

If you do something that's unconstitutional and your own attorney advises you not to, that's a form of corruption. I think that's really the extent of what he's saying.

I don't think he's standing up to you and pointing at you and me and saying we're corrupt in that other sense. The word's the same, but the meaning is different, for whatever comfort that might be.

Now, I made the request that this go over because I really disturbed by the fact that we had Counsel's opinion going way back to 1980 on a particular statute. And I didn't feel comfortable, having been given that opinion, in going forward in contradiction to what the opinion said.

But I have some practical questions I want to put to our Counsel. The first question is, has your opinion changed at all since the last two or three writings, so to speak, from 1980 and subsequent ones, including your letter

to me? Is it still your opinion that the 1980 Knox statute was in contravention of the Constitution?

MR. GREGORY: That is still my opinion, Senator, and since the last time the Committee met as your request, we reviewed a number of documents that had been provided to us by U.C. on the matter, and also I reviewed the article written by Mr. Ballantine.

None of it changes the conclusion that we have heretofore come to, and that is that the 1981 statute is unconstitutional.

SENATOR PETRIS: Now, how do we fix it? What's the remedy? Should there be a lawsuit, declaratory relief of some kind?

I'm trying to figure out what is the law now. The law is on the books.

MR. GREGORY: Right.

SENATOR PETRIS: In your opinion it's flawed.

MR. GREGORY: I think we should correct the record as to one representation made by Mr. Coutin, and that is that I've never advised the Rules Committee that it was not their duty to proceed to consider the confirmation of gubernatorial appointments to the Board of Directors of Hastings.

Quite the contrary, the principle expressed in the California Constitution is that statutes shall be duly administered until a court of at least an appellate jurisdiction has ruled that they are unconstitutional.

So, even though it is my opinion that that 1981 statute is unconstitutional, and would have been held so --

held by a court to have been unconstitutional if a proper challenge had been made to it, it nevertheless is a valid statute of the State of California, being duly passed by this body and signed by the Governor of the State, and should be administered by those charged with its administration until such time as that event occurs.

SENATOR PETRIS: I think you mentioned at a prior hearing that in addition to the constitutional principles, we have a specific statute that says that it ain't constitutional until an appellate court says so.

MR. GREGORY: That's correct.

SENATOR PETRIS: Is that on the books now?

MR. GREGORY: That's part of the Constitution. It was put in there a number of years ago. It was actually a Constitutional Amendment proposed by the Legislature when then-Senator Holmdahl, or Justice Holmdahl, was concerned about the Public Utilities Commission refusing to enforce statutes because they said they were unconstitutional.

SENATOR PETRIS: So, that was authored by Senator Holmdahl at that time.

MR. GREGORY: Yes, and the people adopted it.

SENATOR PETRIS: So, what you're telling us is that since you, nor I, nor Mr. Coutin is an Appellate Court body, our opinion doesn't change the fact that the law is on the books, and we're obligated to follow it.

Now let me get to the challenge. If someone were to seek judicial relief by way of declaratory relief, who would be eligible to do it?

MR. GREGORY: It might come from a variety of sources. The Attorney General, through an action in court, might be able to challenge the validity of the appointments to the Board, or authorize someone with a relator status to do so. That would be one way of challenging it.

SENATOR PETRIS: During this interim I've been doing a little reading and talking, too. I understand that one of the reasons for the change and the support of the Knox bill was that the Chief Justice at the time didn't want to continue serving as President of that Board.

Do you have any idea what the present Chief Justice's attitude is?

MR. GREGORY: No, I do not, Senator.

SENATOR PETRIS: So, if declaratory relief were to be filed, and the ruling came down in favor of, let's say, Mr. Coutin's position, then we put things back the way they were. The Chief would have to go on the Board again.

I guess Hastings placed -- required that the President of the Board be the Chief Justice, because that's the position he happened to be holding at the time. He had to have some participation, I imagine.

MR. GREGORY: It seems like a certain degree of logic.

SENATOR PETRIS: Seems logical, yes.

MR. GREGORY: Of course, there may be some practical problems where now almost ten years have passed since the enactment of that statute. And you said that they would put the Board back the way it would have been, but of course, it

was a self-perpetuating Board prior to that act.

I'm not quite sure exactly how the court might construct that particular remedy, just saying restore the status quo that was there ten years ago.

SENATOR PETRIS: What do you think the court would do on this issue?

MR. GREGORY: It's always difficult to predict what a court might do in a situation as complex as this.

I have a feeling that if the matter were properly presented to a court today, that a court might very well validate what has happened in the last ten years and actually sustain the validity of that statute, not withstanding my opinion that at the time of its enactment, it was unconstitutional.

SENATOR PETRIS: What's that? A pragmatic way to get it?

MR. GREGORY: I think in some respects it's a pragmatic thing. You can relate to my earlier comment that the court would have to consider how it would restore the status quo. You could take a look at the fact that no challenge has been made, even particularly by the Board of Directors of Hastings, who would have been an obvious person to have challenged that statute at the time of its enactment back in 1981.

It could look at some general principles of even trust law, maybe, and argue that the fundamental purposes of the trust established by Judge Hastings have not been violated, that the school does exist and is supported by

appropriations made by the State Legislature; it is still governed by a Board of Directors, although the Board of Directors has a different composition than the Judge had requested more than a hundred years ago. It might come to the conclusion that there has been no fundamental change in the situation, and it might very well validate that 1981 legislation.

SENATOR PETRIS: So, as Counsel, you're telling us that you felt originally it was unconstitutional. It's been on the books for ten years, almost.

What's our duty, as you see it?

MR. GREGORY: I think your duty is to administer the law as it is on the books today until such time as a proper challenge is brought and a court decides otherwise. And that law is the 1981 statute which provides for the gubernatorial appointment and the senatorial confirmation of the persons on the Board of Directors.

And if somebody presents a proper case to the court, and the court were to rule otherwise and rule that the Board is a self-perpetuating Board, and somehow reconstitutes it, of course, that would then remove your confirmation duties, and you would then proceed accordingly.

SENATOR PETRIS: Thank you. I don't have any other questions.

CHAIRMAN ROBERTI: Thank you,, Senator Petris.

Please come forward again.

MR. COUTIN: I have some information with respect to specific questions that you did ask.

First, with respect to the action for declaratory relief, have actually filed an action which tests the constitutionality of the act of 1980 and the power of the Senate and individual Members of the Senate to confirm.

That action is pending in the Superior Court of Sacramento; however, it cannot proceed because Legislative Counsel will not admit service. I've attempted to serve Members of the Assembly and the Senate, and the position of the Legislative Counsel is that they can't -- they're immune from service during the period of time of the legislative session, so that the --

SENATOR PETRIS: That is the law; isn't it?

MR. COUTIN: They cannot proceed.

However, you can waive that immunity and let's get to it, let's have this challenge and lay out the legal positions and have the matter resolved.

SENATOR PETRIS: Well, it seems to me that might be the best way out.

You know my position on it. I've talked to you, and I've stated it publicly. I feel very uncomfortable proceeding under a statute that our own Counsel says we shouldn't have enacted.

But then there's the practical side of it.

Do you happen to know what Judge Lucas is going to do on this?

MR. COUTIN: Yes. That was the other thing, because I did bring --

SENATOR PETRIS: Does he want to serve as Chairman

of this Board? I kind of doubt it, myself.

MR. COUTIN: He said, "Mr. Coutin, I went to the University of Southern California, and I have no desire to be the President of the Law Department at the University of California."

SENATOR PETRIS: I'm not surprised at that. I've never asked him myself.

It would seem to me that that would play some role. If that's his view and it's strongly expressed, it may have some bearing on what the other justices do ultimately when it gets there.

MR. COUTIN: Now, I would also like to add that it is my feeling, though I can't completely prove this, but only by indirection, that Rose Bird knew that the money had been embezzled and she didn't want to be on the Board of Directors when the institution was discovered short in its accounts. That's why she wanted to be off the Board of Directors.

She actually had not attended any meetings of the Boards of Directors that had diverted these funds, but once it was discovered, she must have received minutes of the meeting of '79, which --

SENATOR PETRIS: Are you talking about the scholarship money that was used for --

MR. COUTIN: -- because Hastings internally sent out memos that said the scholarship has been discovered to be the source of funds for West Block acquisitions.

So she, as a Board of Directors Member, she must have gotten the minutes of the meeting.

SENATOR PETRIS: Whatever the reason, she didn't want to serve, and you tell us the current Chief doesn't want to serve.

MR. COUTIN: Right.

The problem is that if you take the Chief Justice off, have you fundamentally changed the Hastings Trust?

No one's addressed the fact that Hastings Trust is a private trust. And in these letters that I've submitted, I've proved 13 different characteristics of private trust of Hastings, which nobody has yet addressed, and the Legislative Counsel has yet to address.

SENATOR PETRIS: I think that should be addressed, but it should be included in that lawsuit.

MR. COUTIN: It's in the lawsuit, and if you're willing to meet me in a court, we can discuss that. And all I ask is this.

You say that a court of appeal must decide this question. I say the Supreme Court of the State of California has decided it in 1886 already, and that simply the question comes down to: every court up to the Supreme Court has to, by its stare decisis in the case Auto Equity, follow that rule of -- this ruling, treating this legislation as unconstitutional.

I get a free pass to the Supreme Court of the State of California, and the Supreme Court of the State of California has to hear the case.

SENATOR PETRIS: Well, I think that's what's going to happen. It might take a little longer, but I think that's what's going to happen.

I'd welcome that, because I think we ought to clear the air once and for all and have the Supreme Court make its decision.

How we get from here to there is another question.

Mr. Chairman, I want to thank the Committee for letting me take all this time. We had some meetings in the interim, trying to figure out a proper solution.

I'm sorry it had to happen at a time that Justice Channel was the one that was in the box, because I've known him for a long, long time. I practiced law in the same community for a long time.

As I said before, it has nothing to do with my opinion of the merits of the appointment. I think he would be an excellent Member of that Board.

In view of the pragmatic approach that our Counsel indicates would probably be taken -- and nobody knows for sure. I think I mentioned last time the definition of Justice Oliver Wendell Holmes, what is the law? When he was asked, "What is the law," he said, "It's a prediction of what the courts might do in the future." And that's as close as anybody can come.

So, that being the case, and the prediction being that justices would probably pretty much ratify what's happened, I don't know if I want to be the one to try that case. I'll leave that to Mr. Coutin.

So, it answers all the questions that I have. It's still a puzzling and fascinating enigma, but I'm prepared to move that the confirmation be approved by this Committee.

CHAIRMAN ROBERTI: Thank you.

Senator Petris moves the confirmation be recommended to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero; the confirmation is recommended to the Floor.

JUSTICE CHANNEL: Mr. Chairman, if I may prolong this hearing.

CHAIRMAN ROBERTI: Please do.

JUSTICE CHANNEL: I want to say that I have no feelings about the constitutionality of the bill. That's something that has been mentioned by Senator Petris; something that, perhaps, ultimately the court's going to have to decide.

But I do want to express my personal indignation at having to sit here, as I have twice now, and listen to the personal attacks on me, and know that it's my place not to sit here and respond -- and I have no intention of doing so. But it's a forum where any kind of garbage can be thrown at me,

and I have no opportunity to be heard, and it can be quoted and appear in the press.

And I also say, with all respect to Senator Petris, who has been an old friend of mine for many years, how it can be said that he hasn't called not only me but this Committee corrupt, I don't see how it can be interpreted any other way. But that's not for me to say.

That ends my brief remarks.

CHAIRMAN ROBERTI: You have the right to rebuttal, and you've made it, Justice.

Thank you very much and congratulations.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:56 P.M.]

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of February, 1990.

EVELYN J. MIZAK
Shorthand Reporter

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STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 14, 1990

2:00 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

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SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

FERN M. LAETHEM, State Public Defender

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CHAIRMAN ROBERTI: We will go to Item Three, and that's the appointment of Fern Laethem to Public Defender. Ms. Laethem, if you would come forward.

Ms. Laethem, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MS. LAETHEM: Thank you.

Good afternoon, Mr. Chairman, Members of the Committee. I do want to thank you for the opportunity to appear before you today, and I would like to provide you some brief biographical information in answering your question.

I graduated from the McGeorge School of Law in 1976, and during that same year I entered the Sacramento County District Attorney's Office as a Deputy District Attorney. I remained in that office until 1979, when I was appointed as an Assistant United States Attorney for the Eastern District of California in the Criminal Division, doing criminal prosecutions.

I stayed with that office until 1980, and in 1981 I opened up a private practice, solo practitioner, doing almost exclusively criminal defense, both on the trial and the appellate levels. During that time I also served the State Bar as a State Bar Court Referee from 1977 through 1981, and from 1983 through 1985, when I resigned that appointment to accept an appointment to serve as a member of the Committee of Bar Examiners of the State Bar of California, which

appointment and term I served for four years, 1985 through 1989.

I have also served as President of the Sacramento County Bar Association's Criminal Law Section, and I'm the immediate past president of the Criminal Defense Lawyers of Sacramento.

I would briefly like to talk a little bit about the Office of the State Public Defender. As everybody here is aware, the Office of the State Public Defender has had its share of problems. However, I believe that some very positive steps have been taken over the last six months.

The study prepared by the National Center for State Courts on work flow productivity set out a series of recommendations which have been implemented by OSPD in conformity with the study. We have established and implemented a work unit formula as a measure of productivity and as a guide in determining individual attorney performance within acceptable ranges.

We have instituted what we call a monitoring system, the words used by the Spangenberg Study, in which our supervisory staff spends a great deal of time in meeting with the attorneys, identifying problems, helping correct those problems, and adjusting work where necessary so that we can get on with the work of the agency in a productive and effective way.

We have also developed and implemented automated daily time sheets that reflect the major case specific and non-case specific work. They're currently in use on a daily

basis. We have also implemented an automated case management and docketing system statewide.

As recommended by the Spangenberg Study, we will review the work unit formulas and monitoring after six months so that appropriate measures can be taken and revisions made to reflect the actual work performed, if in fact the work units are not accurate.

We have also begun an aggressive recruiting program, and over the past several months have hired 18 lawyers statewide, as well as several graduate legal assistants. We have moved to a continuous testing program in our hiring, which has given us much more flexibility in recruiting and hiring qualified attorneys. Our support staff has also grown in proportion with our attorney growth, and we have prepared and have recently come out with a career opportunities book, which I'd be happy to provide to Members, listing and describing the Office of the State Public Defender and the opportunities available.

Currently, we have authorized 85 positions; 73 of them are filled. We have also 10 more authorized positions in the next fiscal year.

Space limitations are preventing us from making significant additional immediate hires. However, towards that end, both our San Francisco offices and our Sacramento offices are in the process of seeking new space, and with the aggressive help of Juarez in the Department of General Services, we do expect to be in new offices by the end of this year.

Our management team is in place. Significant changes have been made in the supervision and management of the agency, both for quality and productivity.

We've received authorization and we are currently recruiting a Director of Legal Training. That person's job will be to develop, implement, and coordinate a statewide training program for the agency. With the influx of 18 new lawyers, as well as the fact that we are now going into federal court and doing litigation at the federal level, this is a must, and we're very pleased that we've been able to secure the authorization for that position.

With 43 unrepresented inmates on Death Row, 38 new death judgments in 1989 alone, the Office of the State Public Defender has got to turn its focus to provide representation in capital cases. In 1988-89, the agency took no new capital cases. In '89-90, we have committed to ten, five of which we've already taken, and we will take an additional ten in '90-91. There are currently 43 active cases in the agency statewide, death cases.

The attorneys in the Office, the agency, all of us, are committed to providing aggressive and quality representation for our clients. Morale is up, and while there are tremendous challenges ahead, I believe that OSPD is equal to the task.

I'd be happy to provide any further information and, of course, answer any questions.

CHAIRMAN ROBERTI: Thank you very much, Ms. Laethem.

Senator Petris.

SENATOR PETRIS: Thank you, Mr. Chairman.

Will you go over some of the death penalty information again? You have 43 active cases now that your Office is handling?

MS. LAETHEM: That's correct.

SENATOR PETRIS: Both in the state and the federal courts?

MS. LAETHEM: Of our 43 cases, four are currently in federal court.

Federal litigation is very new for everyone doing capital defense. Up until -- from 1977 to 1988, only one case statewide, not just our Office, had ever hit federal court. Currently statewide, there are 29 cases in federal court; four of them are from the Office of the State Public Defender.

SENATOR PETRIS: Only one hit, meaning what? Was accepted? A lot of them have been tried, I guess, on writs and petitions and things.

MS. LAETHEM: And primarily at the state level.

What happened is, with the -- from -- since 1987, for the ten years prior to '87, there were only four cases, for capital cases, affirmed by the Supreme Court. Therefore, of course, they weren't going on into the federal courts.

However, since 1987, 62 cases have been affirmed, and currently 29 of them are in federal court.

SENATOR PETRIS: How many are on Death Row altogether?

MS. LAETHEM: Currently there are -- well, there are 248 inmates on Death Row. Of those 248, are unrepresented.

There are actually -- 5 of those 248 are are sentenced on more than one case. So, in effect, there are actually 186 pending cases on appeal in the Supreme Court, 67 affirmed, which comes to 253, but the difference is the five that have double sentences.

SENATOR PETRIS: And 43 of those are handled by your Office?

MS. LAETHEM: Well, 42 are currently handled by our Office; 43 are totally unrepresented.

SENATOR PETRIS: What's the plan for them?

MS. LAETHEM: Well, it's a statewide plan, and it's not just the Office of the State Public Defender.

There has been a joint effort by the Board of Governors of the State Bar of California, by the California Appellate Project, headed by Executive Director Michael Milman, and by our Office to recruit attorneys, both criminal and civil, to represent these inmates on Death Row.

The federal judges have made pleas to the attorneys. The Chief Justice of the Supreme Court has also.

What we are -- what's been clear is that with 38 new cases this year, and 38 new cases next year, the backlog is simply not going to be -- we can't make a dent in it just with our Office and with the California Appellate Project. The civil firms are starting to come forward. I've been actively working in helping to recruit some, and the California Appellate Project has served -- in effect, their attorneys serve as buddies to the civil firms and to the Criminal Defense Bar, but it's an enormous problem.

SENATOR PETRIS: Those that are in that California Appellate Project, the attorneys, how are they paid?

MS. LAETHEM: The California Appellate Project, I believe, was set up by the State Bar of California under the auspices of the Administrative Office of the Courts. And I'm not sure exactly where their funding comes from; although I would assume it is the Administrative Office's budget.

SENATOR PETRIS: And out of the ten you still hope to recruit in your Office, you have ten more to go?

MS. LAETHEM: In attorney positions?

SENATOR PETRIS: Attorneys.

MS. LAETHEM: We have -- actually, we have 85 authorized, and filled 73. That doesn't count the 10 for next year. And while we want to actively, obviously, recruit and fill those positions, there are two things that we have to consider. One is the space. Right now, Sacramento and San Francisco have no offices to put these attorneys. We're working on that.

The second is that I think as an agency, we have to be very cognizant of the fact that bringing attorneys in is not going to do us any good unless we can integrate them and train them. And while I want our agency to grow and continue to grow, I want trained, quality lawyers.

I'm hoping -- in fact, I'm sure that this new position, the Director of Training, is going to help do that. There has not been a comprehensive training program in the Office.

SENATOR PETRIS: Are these authorized positions in

the budget?

MS. LAETHEM: Yes, sir.

SENATOR PETRIS: Do you have the money for them?

MS. LAETHEM: Yes, sir.

SENATOR PETRIS: What's the starting salary?

MS. LAETHEM: The salary varies with the level of experience. The lowest salary is legal counsel -- I don't know exactly where that is -- going all the way up to Deputy State Public Defender and supervisors.

We have had our biggest problem recruiting in the Los Angeles area. Of the 18 people we've just hired, 7 we hired in San Francisco, and the remainder were in -- 9 in Sacramento. We only hired 2 people in Los Angeles.

We're competing in Los Angeles with law firms that are paying $70,000 a year for people right out of law school. However, we are currently attempting to obtain a differential for L.A. lawyers, which has been done for one state agency, and we hope it will be done for us, which will enable us to compete, if not on the same level, at least with some idea that there should be something to help our attorneys there.

We just hired -- of the two attorneys in L.A. that we just hired, one of them took approximately a $15,000 pay cut to work for the agency because of his commitment to the work. I think that's unusual, and I think that --

SENATOR PETRIS: You can't expect very many to do that, I don't suppose.

MS. LAETHEM: No, I don't think so.

SENATOR PETRIS: What proportion of those positions

you're seeking to fill do you intend to assign to the capital punishment cases?

MS. LAETHEM: I wish I could tell you that I could go out and hire all of those people that have the experience and the knowledge and the skill to come in and do capital casework.

We -- those are not -- there are not a lot of people out there that have that experience, and it would be nice if we could do it.

What our goal is, is to hire bright, experienced attorneys if we can, who may not have had capital case litigation, who, within a year of coming on board in the agency, will be up to speed and be able to start working on those cases.

Traditionally, and very importantly, there are always two attorneys assigned to a capital case. Obviously, in a state agency where there's turn over, it would be very costly and time ineffective if an attorney were to work on a case for years and then leave. But by having two attorneys on a case, it also allows us to have as one of those attorneys somebody that is not quite as experienced, and bring them up while working with a more experienced attorney. We also have team leaders and supervisors who provide a great deal of expertise in how the entire agency, I think -- every attorney in that agency is committed to providing quality representation, not just for their own clients, but so that everybody in that agency knows that they have support, and they have help, and that the work is the most important thing

we do, and there'll be people there to back them up and help them.

SENATOR PETRIS: Do you have occasion to work with the Federal Public Defender at all? If you exhaust all your remedies at the state level with a case, and you start in federal court, do you try to bounce that over to them, or do your people stay with it?

MS. LAETHEM: Well, it would be nice if we could.

The agency, before I was appointed, made a commitment, and I believe rightly so, to the Chief Justice and to the federal bench that we would carry our own cases over.

We're talking about cases, sometimes, average 5,000-9,000 page records, and many times much more than that. Keeping the continuity is very, very important, and we recognize that. So, we are committed, and we will keep our cases in federal court.

However, the Federal Defender's Office, and I'm most familiar with the Eastern District because I've worked with them, have been very helpful in providing background and assistance, and especially procedurally, and will continue to do that. Statewide, I think that's been the case.

But -- and actually another problem has been on some of the cases where private counsel are representing people, is that all of a sudden, they're finding themselves in federal court, and some of them really don't want to go forward. And the Chief Justice has really asked us to attempt to get a commitment from these people, taking these cases outside agencies, that they will go forward with the cases into

federal court.

SENATOR PETRIS: I want to ask you a couple of question on things that came up during our time of difficulty.

One was the policy of letting the deputies work at home. What's your policy on that? Do you think it's a good idea or not?

MS. LAETHEM: As of right now, there are no attorneys working at home; although, realistically, during the earthquake, we certainly considered that, and I think in fact we did have one or two attorneys out of our San Francisco office doing some work on the outside.

I recently -- I'm aware of the fact that the state is currently doing a study on work at home. And technology being what it is, I assume that there are going to be agencies that start to do that. We're waiting for the results of the study.

It may be that there are cases where people should be doing that. As of now, we do not allow it. It doesn't exist in the agency.

If things change, if we feel that in cases it can be done, and it can be done in a way that it is monitored, and we know the work that's being done, and the work is being done efficiently and effectively, then I would consider it.

SENATOR PETRIS: Who's doing the study?

MS. LAETHEM: It was -- it's a commission that I believe was appointed by one of the state agencies. I read about it in one of the government magazines that came out, and I don't remember who did it.

The study should be out shortly. Their work was completed, and the report should be out shortly.

SENATOR PETRIS: Another area was on the mission, the mission of your Office.

There was a lot of discussion about how far an attorney is obligated by law to go in representing the defendant, especially in capital cases.

Can you tell us how you see the mission of your Office?

MS. LAETHEM: Yes, sir.

I believe -- speaking both as the Director of the agency and as somebody that has been a criminal attorney for 14 years, 9 of those as a defense attorney -- I believe that our mission is to provide aggressive, effective, quality representation for each and every one of our clients, whether it's at the Court of Appeal level or the capital level. I believe that every avenue that is legitimately and ethically open to us should be pursued. I do not believe the system should be misused in any way.

SENATOR PETRIS: There was some criticism for awhile that maybe a lot of those desperate, last minute efforts were so obviously futile that they shouldn't have been tried. And there's a controversy between those who say it's your duty to try; you never know when you hit the right button and point out some new wrinkle in the law, or whatever; and others who say enough is enough. You just go to a certain level.

In that context, how do you view the mission?

MS. LAETHEM: I would not be the one -- be the

person who says enough is enough. There is not enough.

When there is an avenue that's left to be explored, I don't think it's anybody's right to say in advance that that avenue is futile. If that had been the case, a lot of law that has been made by very committed and aggressive attorneys would not have been made.

SENATOR PETRIS: Do you feel your years as a Deputy D.A. are helpful in your outlook as a defender?

MS. LAETHEM: I do. I think it's given me a very good perspective.

SENATOR PETRIS: Has it improved your credibility with the other side?

MS. LAETHEM: I don't know, sir.

SENATOR PETRIS: Well, I would think so.

MS. LAETHEM: I would hope so.

SENATOR PETRIS: Thanks very much.

MS. LAETHEM: Thank you, Senator.

SENATOR PETRIS: Thank you, Mr. Chairman.

CHAIRMAN ROBERTI: Thank you very much, Senator Petris.

Any other questions of Ms. Laethem?

Is there any opposition in the audience?

Then do I hear a motion?

SENATOR BEVERLY: Move that the Committee recommend the confirmation.

CHAIRMAN ROBERTI: Senator Beverly moves confirmation.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

Senator Craven will be back. Leave the roll open for him, but there are sufficient votes.

Congratulations.

MS. LAETHEM: Thank you. Thank you very much.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:36 P.M.]

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of February, 1990.

Evelyn J. Mizak
EVELYN J. MIZAK
Shorthand Reporter

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STATE OF CALIFORNIA

STATE CAPITOL

ROOM 112

SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 21, 1990

1:50 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

HENRY J. VOSS, Director
Department of Food and Agriculture

SENATOR ART TORRES, Chairman
Senate Committee on Toxics and Public Safety Management

SENATOR DAN McCORQUODALE

DR. MARION MOSES

MICHAEL PAPPARIAN
Sierra Club

ADELAIDE NIMITZ
Families Opposed to Chemical Urban Spraying (FOCUS)

MYRNA TELLEZ

NOEL OTTEN

LYN RAPPAPORT
Concerned Mothers of North Hollywood, Toluca Lake
and Studio City

APPEARANCES (CONTINUED)

SUSAN KACY

MYTYL GLOMBOSKE

LINDA KLEIN

DR. ANA CABOT

FRED KRAUTHAMER

MADELIENE REGELE

HERMAN MULMAN, President
Seniors for Political Action

RANDY FULLERTON

PHYLLIS RABINS

OSCAR SINGER

JANET ANDERSON

CLIFFORD TASNER

VIRGINIA JOHANNESSEN

DEBORAH GLICKMAN

JOSH BETTA, Assistant to the City Manager
City of Monterey Park

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CHAIRMAN ROBERTI: We will now return to the Governor's Appointee appearing today, Henry J. Voss, Director of the Department of Food and Agriculture.

Director Voss, please come forward.

Here's how we'll conduct the hearing today. We will hear from Mr. Voss. Senator McCorquodale, I understand, is here to introduce Director Voss. Then we will hear from witnesses in support. We will hear from witnesses in opposition.

Senator Torres, who is the Chair of the Toxics and Public Safety Management Committee, has asked to join us for the questions, which is what we normally do for a chairman whose jurisdiction in his committee is affected by the appointee. So, Senator Torres, welcome to the Committee, and you'll be allowed to ask questions.

Then we will hear from proponent and opponent witnesses.

Senator McCorquodale.

SENATOR McCORQUODALE: Senator Roberti and Members, it gives me great pleasure to introduce to you one of my constituents, Mr. Henry Voss.

Mr. Voss has owned and operated a farm near the community of Ceres in Stanislaus County. He was active in the California Farm Bureau Federation, and in 1981, became that organization's full-time president, a post he's held

until his appointment last year as Director of the State Department of Food and Agriculture.

Mr. Voss enjoys a great amount of respect in his community and among agriculturalists around the state. He's very important to the agricultural community in California in that he has had considerable experience in operating his own farm and in productions agriculture, knows the problems that farmers have in California dealing not only with the problems of their community, but a wide range of issues, including international trade.

I think he'd make a good -- should continue on. He's made a good Director of Agriculture to this point. I think he deals with the problems very well and has had a very open office to those of us who have a concern about agricultural issues. I think he'll continue to do so.

I'm here to introduce him and to indicate my support, and wish you luck in the hearing this afternoon.

CHAIRMAN ROBERTI: Thank you very much, Senator, for introducing Director Voss.

Director Voss, we will ask you what we ask all the Governor's Appointees, and that is why you feel you are qualified to, I guess the word is maintain this position?

MR. VOSS: Thank you, Senator Roberti and Members of the Committee, Senator Torres.

I feel that I'm qualified for this job in that over a period of years, I've had a great deal of experience working with all sectors of California agriculture: with the

agribusiness community, food processing, and in many areas of the overall economy and society here in California.

Let me just briefly say that my family is a third generation California family. We have grown with California, and California has grown. My children and grandchildren and I expect to continue to be part of California.

I think as a practicing farmer, having grown up in agriculture, I understand well that those areas that are of concern to agriculture also are of concern to society as a whole, and maybe more so today than sometime in the past.

If you were to take a global map, look at the most productive land, which is normally called a Class A land or Class 1 land, around the world, you'll see that most of the large populated centers of the world are on those lands. And that tells me that the water, the soil, and the air that it takes to grow good crops are also good for people, and I think that's something that we're all recognizing today in California, that those are important to all of us.

I've had the opportunity in the past ten years to work with the Legislature, to work with the Department of Agriculture here in California, with the USDA in Washington. I think I understand the responsibilities of those jobs as a member of the administration, of the bureaucracy, if you will, in carrying out the duties of regulations and laws that are my responsibility.

I think that quite often I've heard the concern in the media that someone from agriculture really can't manage

agriculture; that someone from agriculture doesn't have the concerns that others may have.

Let me say that my home is in the middle of a peach orchard. My family has grown up there. That peach orchard is sprayed several times a year for fungus, bacteria, insects. I think my family and I know what the concerns of insecticides are, and we have the same concerns as anybody else, I believe, maybe a little bit more because we've been very close to them.

My operation is a partnership with two brothers. We, in the past, when we were younger, did almost all of the application of chemicals. And today, my sons and nephews do that. So, I think we have a real concern in what happens from a personal interest, but in the general sense of what happens to working employers and employees working in the field.

The water that we drink is pumped from a well in our backyard, as it is on most farms, and so I think the concerns for water quality that are very appropriate to being addressed, as we are addressing them both at the national and the state level today, are concerns of ours, because we live and drink and eat in that environment.

I think the opportunity to have traveled, both representing Farm Bureau and representing USDA over the past several years, meeting with agricultural counterparts, governmental counterparts in countries around the world, gives me a feeling for where we are in California.

California is not only the envy of the world as far as our production agriculture, but in most areas, we are the state of the art when it comes to regulation, when it comes to food safety or food quality in the issues that we do.

In finishing, maybe I guess I could say that I believe that it's an opportunity that I have to continue to bring the agricultural community and agricultural leadership into a more integrated working arrangement with other sectors of the economy and of the society, and I think it's a time that many of us in agriculture, you as elected leaders, are very concerned that all of those pieces of society come together for consensus, whether it's in water or air quality, or the many areas of concern.

Senator, I think those are some of the reasons that I would like to express that I think that I could handle this job, and that I should be confirmed for the job.

CHAIRMAN ROBERTI: Thank you very much, Mr. Voss.

I think before we have questions, I'll entertain suggestions from the Members, that we try to hear the witnesses -- some of them have to leave -- and then we'll reserve our questions until after the witnesses have had a chance to testify.

Are there witnesses here in support of the confirmation of Mr. Voss?

Then I believe some people have come in opposition. I have a list of names. I will read them. If anybody else wishes to testify in opposition, please give your name to the

Sergeant, John Bristow, at the table.

I have the following names, that they'll be heard in the order in which I call them. If you don't hear your name, please give your name to the Sergeant.

Dr. Marion Moses; Michael Papparian; Adelaide Nimitz; Myrna Tellez; Noel Otten; Lyn Rappaport; Susan Kacy; Mytyl Glomboske; Linda Klein; Dr. Ana Cabot; Fred Krauthamer; Madeliene Regele; Herman Mulman; Randy Fullerton; Phyllis Rabins; Oscar Singer; Janet Anderson; Clifford Tasner; Virginia Johannessen.

If there is anyone else, please give your name to the Sergeant who is standing at the table.

Senator Craven.

SENATOR CRAVEN: Mr. Chairman, are these individuals who are going to testify in support of the Director?

CHAIRMAN ROBERTI: No, they're in opposition.

SENATOR CRAVEN: Very well.

You will, I suppose, issue your normal admonition to all of the people?

CHAIRMAN ROBERTI: To be succinct, and please don't replicate prior testimony if you can at all avoid it, because we have a busy calendar, and all the witnesses will want to be heard, and many have traveled a distance. I'm sure the Director would also want to have the chance to rebut, and we can only do that if the time is used expeditiously.

Dr. Moses.

Please state your name again, and if you represent anyone other than yourself, indicate that.

DR. MOSES: No, I don't.

My name is Dr. Marion Moses. It is misspelled on the list. It's M-a-r-i-o-n.

I do have a copy of my statement, if I could leave that with you.

CHAIRMAN ROBERTI: Yes, please. The Sergeant will make sure we have a copy.

DR. MOSES: Mr. Pro Tem and Members of the Committee, I want to thank you for the opportunity to testify before you today regarding the appointment of Henry Voss as the Director of the California Department of Food and Agriculture.

I'm a physician, board-certified in Occupational Medicine, with many years' experience in farmworker health and safety, especially in regard to pesticides. My testimony here today is as a private citizen and not representing any group or organization.

While the California Department of Food and Agriculture has a mandate to promote agricultural production, it is also responsible for protection of workers from toxic pesticides. My concerns with the appointment relate to this important issue of worker health and safety. While experienced in the agricultural production requirements of the job, what experience does he have in health and safety? What can we expect from him regarding control of toxic

pesticides? The health of farmworkers and their families will be profoundly affected by his policies and attitudes regarding the use of toxic chemicals in the agricultural workplace.

On January 20th of this year, near Wasco in Kern County, 25-year-old farmworker Jose Martinez, who had been working in an almond grove spraying parathion, went into convulsions in the fields and died on his way to the hospital. Juan [sic] left an 18-year-old widow and a 4-month-old son.

Parathion is a highly toxic nerve gas pesticide. It cannot be used safely and should be banned from any use in agriculture. The CDFA, in a press release dated February the 8th, 1990, said a ban was a, quote, "over-reaction to an emotional situation," close quote. It lauded the strong California program and stated that the Environmental Protection Agency, or EPA, used its program as a model.

I would like to read to the Committee what the CDFA did not say about parathion. It is from the EPA parathion registration document of December 15th, 1986. It's from this document:

"The Agency ..."

meaning the EPA,

> "has concluded that parathion causes poisonings among all categories of workers who use or come into direct contact with the pesticide. The

risk extends not only to mixer/loaders and applicators, but to field workers and bystanders as well. In addition, these poisonings occur under the most stringent protective conditions and during use when in accordance with label directions. Little or no margin of safety exists for parathion use ...."

and I have emphasized that; that is my emphasis:

"California poisoning incident data clearly show that ... poisonings have continued to occur in spite of California's stricter control measures and restrictions ... and there have been no apparent decline in ground applicator poisoning incidents ...."

And Juan -- excuse me, Jose -- was a ground applicator.

"The California data also indicate that workers are being poisoned despite the use of protective clothing and adherence to label directions."

And that's the end of the EPA statement I'm quoting.

Parathion is 250 times more toxic than another

pesticide in the same chemical class that is getting a lot more attention; it's called malathion. Parathion has a long history of poisonings. Its use should have been eliminated years ago. In fact, it is banned in several countries in the world, including the Scandinavian countries, Great Britain, and Japan. Parathion is not even manufactured in the United States any longer; it is imported.

It is only a matter of time before parathion and other similar highly toxic chemicals are banned. How many more workers will die before action is taken? What does Mr. Voss plan to do about eliminating the use of these highly dangerous poisons?

Poisonings and death are not the only effects of concern from agricultural pesticides. Not all pesticides are acutely toxic; that is, they do not cause immediate or obvious harm. This, however, does not mean that they are safe. Such pesticides pose a much more insidious threat to the health of farmworkers and their families, and chronic effects from long-term, low-level exposures are more worrisome from a public health point of view, since there are not likely to be any signs of a problem until it is too late.

Chronic effects of concern are: cancer, birth defects, reproductive effects such as infertility, miscarriages, and stillbirths; and effects on the brain and nervous system, particularly the developing brain. Many of

the pesticides used in agriculture are: carcinogens, cancer-causing chemicals; teratogens, birth defect producing chemicals; neurotoxins, they damage the brain and nervous system; or some combination.

When the first childhood cancer cluster in MacFarland was announced in 1984, no action was taken against the many cancer-causing pesticides being used in agriculture. And now another cancer cluster has been found among farmworker children in Earlimart. There has been no public health response by CDFA to the toxic burden faced by the workers and their families in these agricultural towns.

Current CDFA regulations do not protect workers from potential chronic health effects. Pregnant women work in the fields where pesticide residues are absorbed through the skin and cross the placenta, exposing the embryo and the developing fetus. Children work in the fields, and toddlers and infants are often taken to the fields by their parents since child care is not available. Rapid growth, higher metabolic rates, larger surface area, increased absorption and decreased elimination of certain chemicals, combined with less mature detoxifying systems, can make children more susceptible to adverse health effects from pesticide exposure than adults.

Current CDFA regulations do not take into account these realities of agricultural practice. We do not allow children to work in factories, but we do allow them to work in factories in the fields. What commitment does Mr. Voss

have to these children? How does he plan to address the use of cancer-causing chemicals in agriculture? Will he show leadership in protecting farm workers and their families from potential chronic health effects of pesticides? Will we see chronic effects-based regulations, including changes in re-entry intervals and record keeping requirements?

These health and safety issues not only impact on farmworkers, but on the general public and the environment as well. In the interests of time, I have not raised other issues of concern regarding pesticide contamination of groundwater, drinking water, and of the serious ecological and wildlife effects of agricultural pesticide use.

Thank you very much.

CHAIRMAN ROBERTI: Thank you very much, Doctor.

Please, no applause.

Thank you very much, Dr. Moses.

Are there any questions? Senator Petris has a question.

SENATOR PETRIS: Have you communicated those views personally to the Department?

DR. MOSES: Oh, many times. I usually come to the Worker Health and Safety meetings that the Worker Health and Safety branch has every -- one Friday a month, every couple of months. It depends. I come to those meetings fairly regularly.

And then, I was involved with the negotiated

rule-making with Jim Wells, who's in the Enforcement Division.

I think they're fairly knowledgeable about my views, yes. I'm not a shrinking violet in terms of trying to protect farmworkers.

SENATOR PETRIS: You've advocated banning of --

DR. MOSES: Parathion, yes.

SENATOR PETRIS: What is their response?

DR. MOSES: Well, I think the response is -- I didn't bring it with me, but there is a press release that the Department issued in which they felt that this was an aberrant thing, that this was a highly unusual -- that's usually their reaction. The reaction is usually, "there's nothing wrong with the chemical; it's the way it's being used." And we're saying that's just not true. These chemicals, some of them, cannot be used safely under current conditions of agricultural practice.

Now, they may be able to be used safely inside a factory with four walls, where everybody's in moon suits, and the temperature isn't 112 degrees in the shade. But people cannot, cannot, use these chemicals safely under conditions of agricultural practice. That's the acutely toxic ones.

Now, cancer-causing pesticides, we're even more concerned about that because none of the Department regulations touch on this issue. They just basically -- all of the Department regulations -- and I will say, I

agree that the California regulations are better than any other regulations in the United States, and perhaps in the world, but they're the only ones out there. And I would like to see California do even better and protect, and particularly against the chronic effects.

The way they do it now, if you're not dead, if it doesn't kill you, or doesn't make you ill, or there's not a re-entry poisoning, then it's not regulated. If it's a carcinogen, or neurotoxin, or it may be a teratogen, there's a lot of paper -- paper restrictions, but there's no actual protections for the workers out in the fields.

SENATOR PETRIS: Have you spoken to Mr. Voss about this at all personally?

DR. MOSES: Well, Mr. Voss and I were on a television show in Sacramento.

What was that? Was that a year ago or a little bit longer than that?

MR. VOSS: A little longer.

DR. MOSES: And I think that -- I think we just sort of agreed to disagree.

He comes to this from a different -- I come to this from a public health perspective; from the view of a physician who's deeply, deeply concerned about what's happening to farmworker children. Not only farmworker children, but children. There's a lot of data now that shows an association between cancer, not only in children, but in adults as well, and I'm very concerned about this.

And I haven't seen the Department do anything about this.

SENATOR PETRIS: I have an extract here from the EPA report of 1986 that says parathion is among the top five pesticides in California in terms of frequency of poisonings --

DR. MOSES: That's correct.

SENATOR PETRIS: -- number of hospitalizations from poisonings --

DR. MOSES: That's correct.

SENATOR PETRIS: -- and number of days required to be hospitalized.

DR. MOSES: That's correct.

Parathion is in a class of the nerve gas organophosphates, and along with the other toxicity ones, are responsible for most of the acute poisonings in the state of California.

SENATOR PETRIS: You indicated protective clothing doesn't work.

DR. MOSES: No, and that's the thing, particularly with parathion. Parathion's a very interesting chemical. It's very -- it's not as predictable in its decay rates. This has been known for a long time. This is why it's banned in the countries that it is banned in. It just can't be used safely.

There are less toxic alternatives. It isn't as if, if you don't use parathion, that you've taken away a very, very important tool. Now, it is cheap. It's off

patent. It's been around for a long time. I understand all of that.

But we just think the health risks are too high.

SENATOR PETRIS: The report also says that the California data indicates that workers are being poisoned, as you indicated, despite the use of preventative clothing, protective clothing, and adherence to label directions.

> "An analysis of 100 parathion poisonings in California from 1975-1981 shows that more than 50 percent of the cases occurred while the workers were allegedly wearing the required protective clothing and equipment."

It also indicates that the spray drift may cause adverse effects to nontarget populations, and so forth.

Do you think that the focus of the Department on production, which is your opening sentence, leads them to subordinate public health considerations to production considerations?

DR. MOSES: Well, I think that that's the case. I think part of the problem may be that there really isn't anyone who thinks that this is important, as people like me think it is.

We want a productive agriculture. I mean, after all, I work with farmworkers. They don't have jobs if we don't have productive agriculture, but they shouldn't have

to give up their lives.

SENATOR PETRIS: Then you're not saying stop producing these products. You're saying get something safer.

DR. MOSES: I'm saying let's start looking at toxic farming for what it really is. And who's paying the price for this? These little tykes down there in the valley are the ones who are paying the price for it.

And all I'm asking, all I'm asking, is let's start giving human health considerations, at least equivalent to agricultural production. If we've got less toxic alternatives, let's use them. Let's go towards sustainable agriculture.

We're in a lot more trouble than some of the people in the CDFA would like us to believe in terms of what's happening to California for more than a billion pounds -- 250 million pounds of pesticides that are applied every year.

SENATOR PETRIS: Aren't we more likely to accomplish that through the Health Department rather than Agriculture?

DR. MOSES: Oh, I would love to see OSHA or the Health Department take responsibility for worker health and safety. It's like the fox guarding the chickens, if I may use the cliche. It doesn't belong here.

But, you know, I'm a realist. It is here. I've been working with this for 25 years in California. And I

haven't seen a change.

There was a time when it was under the Health Department, and I think it was better. Worker health and safety should either be under OSHA or the Health Department. Or, not under someone who's looking for agricultural production values, and that everything has to be subservient to that.

I agree, it's important. It is important. But then, the health part of it, then, should be put in the hands of people who are qualified in that area, and in which that becomes the standard on which you judge the chemical is health and not production. This is certainly what happens in other work places.

It does not happen in the agricultural workplace because farmworkers are not covered by OSHA, which all other workers in the United States are covered by. But farmworkers are not, so they're left at the mercy of the EPA, who delegates the authority, and State Departments of Agriculture, who have agricultural production, and rightfully so. I don't say that they shouldn't.

I'm saying, if they have responsibility for worker health and safety, then they need to start paying some attention to it, and that's not being done.

SENATOR PETRIS: Thank you.

CHAIRMAN ROBERTI: Thank you again, Dr. Moses. The next witness is Mr. Michael Papparian.

MR. PAPPARIAN: Thank you, Mr. Chairman, Members.

I'm Mike Papparian, representing the Sierra Club.

While we have no position on the actual confirmation of Mr. Voss, we do have a number of issues which we urge you to consider in your deliberations today.

As you will hear today, the medfly situation has been like -- unlike any other facing state government. Regardless about how you feel about the spraying itself -- we're against the spraying; there's others who are in favor of the spraying -- regardless about how you feel about the spraying itself, there can be no doubt that there have been very serious problems with how CDFA has handled the spraying issue.

The Department of Food and Agriculture has shown, in our view, a shameful disregard for public concerns and needs. This has led to a loss of credibility on the part of CDFA and state officials at a time when public concerns are increasing dramatically.

I'll mention just six issues briefly involving the malathion spraying.

One, it's only been in the last few days that some independent health specialists have been brought in to advise the State on the problem.

Two, the Department has been insensitive to the volume and nature of the complaints. At one time, a CDFA official suggested that several thousand complaints is not a significant number because there's millions of people living in Southern California.

Three, many people are being sprayed without clear warning when the spraying will take place in their neighborhoods.

Four, large populations of non-English speaking people are being sprayed without warnings in a language they can understand.

Five, the Department has been slow in letting people know about what they are being sprayed with. Only yesterday did they release to the Legislature a full accounting of all 15 substances found as impurities in the malathion being sprayed in Southern California.

And six, the Department of Food and Agriculture has been slow in looking at alternatives to the malathion massive aerial spraying.

In addition to the medfly issue, other issues have arisen in recent weeks. For example, the Senate Office of Research, as I'm sure you're aware, has issued a report indicating that scientific concerns about pesticide regulations have not been adequately taken into account in the regulation of pesticides by the Department. In addition, related concerns have arisen regarding aldicarb. Despite some clear concerns from scientists at Health Services and folks at the State Water Resources Control Board, the Department rejected this advice to ban aldicarb.

While I don't have any first-hand knowledge --

CHAIRMAN ROBERTI: Aldicarb was used on apples.

MR. PAPPARIAN: While I don't have any first-hand

knowledge of Mr. Voss's personal involvement in these issues, they do speak poorly of the current ability of CDFA to meet the needs of the public. And I believe, as I mentioned at the beginning, that these should be taken into account and seriously considered in your deliberations on this appointment.

Thank you.

CHAIRMAN ROBERTI: Thank you very much, Mr. Papparian.

Any questions? Seeing none, thank you.

The next witness is Adelaide Nimitz.

MS. NIMITZ: Honorable Members, my name is Adelaide Nimitz. I am spokesperson for FOCUS, Families Opposed to Chemical Urban Spraying.

We tend an anti-malathion hotline in Burbank in my home. We are on the phones from 7:00 a.m. until 11:00 p.m. in the evening. We have received in four weeks 26,000 calls. I have them here. They're coming in so rapidly that we can't get them out on our computer printouts. I have books -- I have pages of names here.

The complaints from the callers vary. There are frustration, helplessness, confusion, to varying medical problems from the aerial spraying of malathion. They complain from very mild to very extreme.

The Agriculture Department and State Legislature must address these cries for help. Children's immune systems cannot tolerate the repeated doses of aerial

spraying of malathion, nor the old, nor the infirm.

There have been no low-dose repeated spraying testing done or long-term testing on aerial spraying of malathion.

Mr. Spaugy and Mr. Siddiqui have both admitted before the Los Angeles City Council that there have been no low-dose repeated spraying testings or long-term testings done on aerial spraying of malathion. These doses must be tested. The malathion aerial spraying must be tested, and it must be stopped now.

The Governor has called for a panel of medical experts to examine the existing problems, but I'm afraid that's going to be too late. There are thousands of children today with severe cases of diarrhea that clear up after a few days. When sprayed again, the diarrhea reoccurs.

The Agriculture Department has refused to recognize documented medical information from creditable physicians and scientists on aerial spraying of malathion. Senator Voss [sic] has shown the same lack of concern for the safety of the people.

So therefore, we believe he would be sympathetic to the needs of one of the largest businesses in the world, and that is the Department of Agriculture, therefore making him totally ineffective for the people of California.

We would hope that you will look in to the core of your hearts at the issue of the aerial spraying of

malathion. We the people appeal to you. You are fathers; you are husbands; you are mothers. We are mothers and concerned parents.

You are our elected officials. We have put our trust in you, and we ask you, we ask the State, to please urge the Governor to stop the spraying of aerial malathion on our homes until further testing can be done.

And I thank you very much.

CHAIRMAN ROBERTI: Thank you very much, Ms. Nimitz.

Do you have among those people who have contacted you any incidents of people who have experienced any types of illness since the spraying has taken place?

MS. NIMITZ: Yes, I do.

What we do when people call in, we first ask them to call the Health Department, Dr. Papanek, and document it. They document the time they've called and the date and the person that they spoke to, although Dr.. Papanek has said he's only received 300 calls. We have sent thousands of calls over to him.

And the horrible thing about this situation is, it's very difficult to get physicians to treat people who are poisoned by malathion. It's very -- malathion breaks down quickly in the body, and it's very difficult to get testing. And doctors are very apprehensive to do that because the state is saying that -- contending that it's safe. So therefore, they can't treat a symptom of

something that is supposedly safe.

We have one person in particular that's doing our medical documentation for us, Leanna Kelly, who was severely damaged by malathion. She was exposed in 1984, and since that time she's moved out of the spray area. She's a cartoonist for Hanna-Barbera, and she lost her job, and she's -- she's quite bad now. And her skin is totally affected. Her skin dies every four hours from malathion. It's affected her nerves, and her skin actually peels every four hours. And when she wakes up in the morning, she's stiff, just like a burn victim. It's almost as if she's been in like in a nuclear holocaust.

A woman called me the other day who has only -- she's a young girl, actually, 25 years old. She has a quarter of her eyesight, and she said that when they spray, the malathion actually causes her -- the quarter -- the little sight that she has left to be affected, and she has very, very poor vision, and she's quite anxious about this.

And there are many. I could just -- there are many cases of people with vomiting, diarrhea, severe skin conditions. And children especially are so affected. There are people that have to leave their homes that are on respiratory hookups that need -- that rely on these machines, and they have to leave their homes. They have no place to go. Some of them are on welfare, and they're forced to find lodging in hotels, and they can't afford to

do that.

I have -- I have actually thousands of cases here of very severe conditions, and also a lot of mental anguish, too. There are Vietnam veterans that are calling us who are having recall with the helicopters flying so low over their homes. They're having -- they call, and they're so anxious. And I think that mental anguish is as bad as physical anguish.

You know, Dr. Spaugy is always saying -- trying to belittle all of these people with these very serious complaints, and saying that they're imagining these. But it's not -- it's not true. It really is not true. Certainly, when you have babies that are sick, I mean, they can't be imagining these symptoms. They can't be psychosomatic.

I just urge you to -- I would like to send you, submit, copies of all of the medical affidavits that we have now, and we are getting people documented. We're finding physicians are coming out to help.

A veterinarian called me yesterday, Dr. Paula Kishlack, and said that she had done an autopsy on a dog, and they found malathion poisoning. And there were holes in the dog's intestines because he'd been eating the grass.

So, we have a lot of documented information.

CHAIRMAN ROBERTI: Thank you.

MS. NIMITZ: Thank you.

CHAIRMAN ROBERTI: Next witness is Myrna Tellez.

MS. TELLEZ: Hello.

Honorable Members, my name is Myrna Viega Tellez, and I'm a mother of four small children, a registered voter, and we live in the Mount Washington area, a small community in Los Angeles.

For those of you who do not know, Los Angeles, Orange County, and the San Gabriel Valley are all getting sprayed every three weeks with the pesticide malathion. By sprayed, I mean every 21 days six helicopters lift off from El Monte, California with hundreds of gallons of malathion, and in designated areas, they dump this poison over an urban area where millions of people live.

The Department of Agriculture and Health tells us to cover our cars because it'll eat the paint, to cover our ponds because it will kill the fish. But what about our parks and homes where our children play?

They also say it is safe. Well, I'm here to tell you that it is not safe. I am here to tell you that Mr. Henry Voss, Mr. Spaugy, and Dr. Papanek are all liars. I am here to tell you that children are vomiting, getting diarrhea, stomachaches and flu-like symptoms because of malathion.

I am here because Governor Deukmejian is not listening to the outcry of the people in our communities. I am here because when the Department of Agriculture and the Department of Health tell me it is safe, I remember what they say about DDT, Alar, and Agent Orange.

I cannot see why the Department of Agriculture and its $16 billion industry is prioritizing the fruit in the state of California and not the humans who occupy it. I am sick of the Department of Agriculture's lies. I am sick of Governor Deukmejian, who obviously does not care for the health of its citizens, and I am sick of the malathion spraying.

I ask that you halt the spraying of malathion in our communities.

My outrage is tremendous for this administration, and I strongly oppose the confirmation of Mr. Henry Voss.

I am looking at February as my first month of pregnancy. Nine months from now, in November of 1990, I hope from the bottom of my heart that the Republican administration, along with its candidate for Governor, will all be stillborn in the State of California.

Thank you.

CHAIRMAN ROBERTI: Thank you, Ms. Tellez.

Our next witness is Noel Otten.

MS. OTTEN: Honorable Members of the Committee, my name is Noel Otten. I reside in Burbank, California. I'm a member of the American Federation of Television and Radio Artists, as well as the Screen Actors Guild. I'm not here officially for them, however, but I do want to express the concern of a lot of my constituents in the entertainment industry, which is, if you will realize, centered in Southern California.

We're having a lot of difficulty in the entertainment business with the aerial spraying issue of malathion. We have a lot of people coming in from out of state, from all over different countries in the world. We're having to apologize to them for the inconvenience of having their cars rewashed. We're having to apologize to them that they can't come into our recording studios -- my husband and I jointly own a recording studio venture in Burbank -- because their vocal chords are swollen up after the spraying and they can't record their records. So, they're going elsewhere, gentlemen. The entertainment industry is going elsewhere, and you know what a fickle industry it can be in regards to where they choose to employ their people.

John Ratzenburger from "Cheers" has informed me that he will be moving his entire family out of state because of this issue.

I urge you to consider this important industry. I do believe it contributes to the economics of the state as well as the Agriculture Department.

I'm a former DDT pesticide victim. My parents were told by the government that DDT was safe, and they were allowed to purchase it on base at the commissary. It came in nice, wonderful silver cans, stamped "DDT". I used to joke with them, "Oh, you got the TNT again, huh, mom."

They'd spray it in my bedroom for mosquito eradication. They'd spray it in our tents when we went

camping, and I was sprayed with it from the ages of 10-14.

Now, gentlemen, I think that it's somewhat of a coincidence that at the age of 18, I developed Bell's palsy, which is a central nervous dysfunction of the fifth nerve; an unexplained illness. They don't know what causes it or how to cure it. At the age of 20, I had my first D&C for excessive bleeding. I've been pregnant one time in my entire life, and I almost lost my baby at four-and-a-half months of gestation and had to be hospitalized and medicated in order to carry her to term. She has a mild form of joint deformity. These are all pesticide-related symptoms, gentlemen, reproductive difficulties.

Have we forgotten what happened to the California condor? Have we forgotten that the reason they are almost extinct was because of pesticide poisoning weakening their eggs? Well, what happens to little girls whose eggs are formed early on, and we only have a certain number of them.

I want you all to know that I would not be here, nor any of my constituents would be here today, if we hadn't personally suffered symptoms of poisoning, and after the fact, put two and two together, because the state never informed us of what symptoms to be aware of.

I stayed in the spray area two times. Both times got sick. Went in, had my doctor document it. Here it is; under fear of perjury he signed it. He said, "Yes, you are exhibiting these symptoms." However, we're being told that they can't report these things to the state

because they have to prove it scientifically.

When asked in last Friday's school board meeting by a doctor why there are no tests available for proving low-dosage exposures, we were informed by the Ag. officials that there are no tests for low-dosage exposure levels. So, our doctors are helpless in this.

Mr. Voss is ignoring and insulting his number one source of manpower in this state by not engaging our cooperation in the eradication effort. Why has he not come to us, the citizens who are supposed to be being affected by this pest, and asked us personally to strip our fruit trees? Citrus is the only thing out there right now. We could strip our fruit trees. We would be glad to if given the choice between stripping and chemical aerial spraying.

Now, he has the choice in his farm as to whether or not he wants to use pesticides. Let me show you that a growing number of people in the State of California do not choose to use pesticides, and the demand for their produce is growing and increasing, and I believe this is going to be the future of the Agriculture Department in California. Please be aware that this is happening, and it's important.

And right here, in this article, it states:

> "Prohibited compounds include any synthetic fungicides, bactericides, or fumigants, growth regulators, methol bromide, organophosphates ..."

of which malathion is one,

"and sulfur diozide."

Please realize that this is the future of agriculture in this state. If you don't want us to boycott the fruit, then listen to us. The more educated we become, the more aware of the dangers of putting pesticides into ourselves and our children, the more we are going to choose selectively what fruits and vegetables we are going to be eating.

Thank you.

CHAIRMAN ROBERTI: Thank you very much, Ms. Otten.

The next witness is Lyn Rappaport.

MS. RAPPAPORT: Thank you. My name is Lyn Rappaport. I'm here to represent the Concerned Mothers of North Hollywood, Toluca Lake, and Studio City.

I'm overwhelmed by all this information that I'm hearing.

As concerned mothers, we understand that the Agriculture Department has a job to eradicate the medfly. But what we don't understand is how they could jeopardize our health and violate our constitutional rights in doing so by spraying a pesticide over our homes, churches, playgrounds, and schools in pursuit of a medfly.

We as mothers are concerned for the well being of our children. Our obstetricians and pediatricians have also expressed their concern over the fact that malathion

could be a mutagen, and that if this spraying continues, years from now it's possible that our children and grandchildren could be born with malformations.

We don't feel that Mr. Voss understands the implications of urban aerial spraying. Any pesticide is a poison. Malathion is a poison. And before our children become a statistic, the urban aerial spraying needs to stop now.

Thank you.

CHAIRMAN ROBERTI: Thank you, Ms. Rappaport.

Susan Kacy.

MS. KACY: Hi. My name is Susan Kacy. It's spelled: K-a-c-y. I'm from Sylmar, California, one of the areas that's being targeted as being sprayed for the medfly.

I'm not going to talk about the children that have been affected by this, because other people are covering this. What I am going to talk about is the ecosystem of our area.

I've been an organic gardener for ten years. For ten years I've had a garden free of pesticides. We've had beneficial insects out there. Everything's pretty much taking care of everything else. I like to raise vegetables and herbs back there because I do like to feed my family organic produce when I can find it.

Since the spraying has started, there are no beneficial insects in my garden. They're all gone.

There's a few bugs out there I've never seen before that are decimating some of my plants, and I believe this is a direct result of the spraying.

I know that there are still bees in my yard. They haven't been killed because they're in their hives at night, but they will go out and go to the flowers that have been sprayed and bring this poison back to the hives, so that the honey will be contaminated. All local honey will be contaminated because of this. And people will eat the honey and get sick.

As a student at the community college level, I have day classes and night classes. I have classes on Monday nights. Monday nights they spray, starting at 9:00 o'clock. Classes get out at 10:00, so you have students out there getting sprayed. You also have grocery store workers, you have security guards, and you have doctors and nurses working night shifts coming home in the spray.

I have a friend who's a nurse. She works in the nursery at Olive View Hospital in Sylmar. She got stuck in the spray and she got violently ill.

Schools have not been notified when they are planning to spray. This means that schools that would normally try and take some sort of precautionary methods, covering up the sand boxes and such, don't have a chance to do so. So, we have pre-schoolers going to these schools the next day. They can hose down the grounds, but you can't get the malathion out of the sand box. So, we have

young children playing in the sand contaminated with malathion. You can keep them away from the sand boxes to some extent, but young children will get away and will go in the sand box.

Mr. Voss is a farmer. He said he raises peaches. I know peaches are one of the crops that would be affected by the medfly. But Mr. Voss doesn't live in the city, and maybe where he is, he chooses to use pesticides. That's his choice. That is not our choice.

We have no choice in this matter. We're being sprayed regardless.

You can go inside your house to try and get away from the spray, but if you have an air conditioner, a swamp cooler, a heating vent, you will get the malathion in your house. If you're an asthmatic, you will have an attack. People have had severe asthmatic attacks as a result of the spraying.

The possibility exists that there is no threshold for chromosome damage, according to Professor Mark Lap of the University of Illinois College of Medicine. In other words, even the most minute dose of malathion could cause it.

So why is the most populated county in California being sprayed with malathion? I'm a volunteer director for the pre-school Sunday school at my church, and I know how it affects kids. We have seen symptoms, including rash, nausea, dizziness, headaches, sinus congestion and watering

eyes. I've talked to parents whose kids go there.

I really think it's time for this to stop. Since Mr. Voss has completely disregarded the health hazards caused by malathion, and continues to support indiscriminate spraying, endangering ourselves and our children, I must plead with you, for the sake of my children and all of our children, that you do not reconfirm Mr. Henry Voss as head of the Department of Food and Agriculture, please.

CHAIRMAN ROBERTI: Thank you very much, Ms. Kacy.

The next witness is Mytyl Glomboske.

MS. GLOMBOSKE: My name is Mytyl Glomboske, and thanks for allowing me to speak. I'm going to make it very short, not be repetitious of what's already been said.

I am a great-grandmother. I have children, grandchildren, and great-grandchildren living in this state, California. And I really am upset.

CHAIRMAN ROBERTI: Do you live in the spray area?

MS. GLOMBOSKE: I live just outside of the spray area, but I really don't understand why human beings can do this to one another.

I mean, we all are parents. We all have children. And I don't understand people doing this to other people.

Now, I don't want to take time too long to say what I feel in my heart, because I'm sure all of us feel the same way. We all value our health, all value our

children.

But I would like to appeal to everyone here, all you Senators, to please honor and pass Senator Art Torres' Senate Bill 1823. I think it's extremely important for all of us, all of us. Even you, Mr. Voss.

Thank you.

CHAIRMAN ROBERTI: Linda Klein.

MS. KLEIN: Hello. My name is Linda Klein. I'm here to represent the residents of Northridge, Granada Hills and Chatsworth.

We are located in the northwest section of the City of Los Angeles. Some of us have never been sprayed. But, you know, it's like hair spray. When you spray it on your hair, it kind of goes everywhere. It doesn't go -- so it drifts. So, some of us have been sprayed not knowing it.

Last summer they did find a medfly on the campus of Cal. State University Northridge. And they found one medfly, and they notified us. They sprayed us. And two weeks later, they released the sterile medflies. Not a word was said. Nobody complained.

I certainly didn't think too much about it. We kind of watched the helicopters go up and spray.

But last January, this last January, I'm sitting, and I'm watching television. And I'm watching my fellow residents of Los Angeles getting sprayed over, and over, and over again. And I couldn't stand it. I had to

do something.

Even though it really hasn't affected me personally, it has affected my city, and I am very concerned.

I don't think Mr. Voss understands what urban aerial spraying does, and the implications it has on our health. And I don't think that he -- he knows about pesticides, but does he know about the nonuse of pesticides? In the state of Texas, they don't use pesticides any more. They've learned how to organically farm.

I think the spraying of any poison over any urban area is unconscionable and should be stopped.

I also don't believe that the Governor of this state has the right to jeopardize the health of its citizens in support of any industry.

Thank you very much.

CHAIRMAN ROBERTI: You've hit an emotional level with me, and some of the other witnesses have, and I just have to say something that I feel about this administration.

It's not really directed toward Mr. Voss, and not directed in a punitive fashion toward Governor Deukmejian.

But it's almost as if they treat the City of Los Angeles as foreign territory. Anything goes if it's Los Angeles.

The Governor said that Los Angeles' major export

was criminals, or something along those lines. As if the people of Los Angeles just don't amount to anything. We're nonpeople.

I live in Los Angeles, too. It's insulting. It's deprecating, and I think the time has come for a stop to that attitude.

And I think that's why the attitude is, you know, you can just spray all you want in Los Angeles.

MS. KLEIN: Nobody cares.

CHAIRMAN ROBERTI: There was spraying in Santa Clara County, but it didn't reach the proportions of unended spraying that takes place in L.A.

MS. KLEIN: And some of the areas -- they give us a map every day; that's where they're going to spray.

Some of the areas border on each other, so two nights in a row, somebody might get sprayed two nights in a row because the helicopters come over, you know, on one street, but it goes everywhere.

And until we started this, they sprayed whether it rained; they sprayed whether there was fog in the air, whether it was windy. They had no regard to the weather at all.

CHAIRMAN ROBERTI: Absolutely.

MS. KLEIN: But since we've started this, they no longer spray when it rains, and they no longer spray when it's windy. So, they have listened to us somewhat.

CHAIRMAN ROBERTI: Thank you, Ms. Klein.

MS. KLEIN: Thank you.

CHAIRMAN ROBERTI: Dr. Ana Cabot.

DR. CABOT: Good afternoon. Thank you for letting me testify today. Thank you, Senator Roberti, Members of the Committee, Senator Torres.

I'm a resident of 2180 Lorraine Road in the City of San Marino, California. I represent other concerned citizens against the spraying of malathion. Our school board has taken a position against it, and our city council has taken a position against it.

We feel that if the risks are unknown, then the benefits must be beyond question. This is a health issue. When the health of the public is at stake, the burden of proof lies with the Department of Food and Agriculture to prove that it is safe, not for the public to prove that it is unsafe.

Alternatives, such as no risk measures, must first be proven ineffective. The state of emergency that has been declared in California does not represent a threat to our lives. Medflies attack our pocketbooks, not our bodies. Henry Voss says that it's safe, but we've heard this statement before about things which, 20 years later, have turned out to be unsafe.

I would like to call to your attention some articles I have, some from the L.A.Times and some from the Pasadena Star News. I feel that Mr. Voss hasn't really been up with preparing for this state of emergency that

we've had.

I have one article here in particular from the Sunday L.A. Times, February 18th, talking about -- actually a discussion of the labs in Hawaii; how they aren't even -- that Mr. Tanaka, who was taken out of retirement to -- he's got a green thumb for growing medflies. His warehouses are too small to produce -- this is a quote:

> "His warehouses are too small to produce enough flies to combat the current Southern California infestation, and that two new rearing laboratories on Oahu are put into full production, hopefully, this month."

And there's another lab which looks like a palace next to Tanaka's humble warehouse opened last month and will be able to produce 50 million flies a week later.

And then here on Monday, Star News, it said that the new lab which they've built is not -- isn't expected to go into full capacity until July, but they've found out now that the target date Agriculture officials have set of the crop destroying pest using malathion will be later than that.

I think someone should be in charge of growing medflies. I think that's a very reasonable approach, the sterile medfly approach, instead of spraying us with poisonous toxic chemicals.

Another one I feel is that we can quarantine. I have another article here from the Saturday Star News, February 17th. Here's what the Department of Agriculture says:

> "Agricultural officials say that human transport of fruit containing medfly larvae is the most common way the pest is spread. They admit that they have not done a good job of educating the public or of stopping the fruit at state border crossings and airports.
>
> "Right now, we are spraying 383 square miles in Los Angeles, Orange, and San Bernardino County. The eradication efforts are based almost exclusively on aerial sprayings."

And I object to that.

Also, I have a quote from Mr. Bill Edwards, the Department Deputy Agriculture Commissioner. He says -- this is regarding the airlines, because I think L.A. is an international place. People come from all over the world. The medfly's endemic in 90 countries. How are we going to keep it out? I think this is one of the ways. Here's his quote:

> "'We have tried for years to work with the airlines, but they

> just don't want to get involved with public announcements,' Edwards said."

Another way to avoid the medfly coming into California is through the mail.

I think we need to use those approaches first. Make those effective ways of controlling the medfly before continue with aerial spraying.

I also have an article here, Thursday, February 15th, the Star News, with fruit fly finds. This information is from the Department of Agriculture. It says:

> "The source, California Department of Food and Agriculture.
>
> "Mediterranean fruit flies found in the west San Gabriel Valley since July, 1989 by city ..."

and I'll list them for you. I think it's rather interesting: Alhambra has 2; Arcada has 1; Monrovia has 2; Monterey Park has 3; Pasadena has 1; Rosemead has 6; San Gabriel has 11; South Pasadena has 2; Temple City has 3; and San Marino doesn't have any, and yet we're being sprayed.

Also -- I'm almost finished -- I'd like to call to your attention here, Saturday, February 17th. This was a meeting, I guess, of Agriculture officials. I wasn't able to attend, but it says, and this is a quote:

"... but a state official said at a Los Angeles School Board hearing Friday on the safety of malathion that the state had spent $230,000 alone to buy 10,000 gallons of the pesticide used in aerial applications."

I think they're saying they're using such a little amount, but what are we going to do with 10,000 gallons?

And also, too, I have my last, and in concluding, I'd like to thank you all for hearing me today. And I have a -- I'd like to urge you to support Senate Bill 1823. I think the use of pesticides is primarily a health issue. I agree that it should be worked with the Department of Agriculture, but I think it's primarily a health issue.

I grew up on a ranch in Santa Fe, New Mexico, on 250 acres, and we used to raise fish, and alfalfa and apples. And one time we did use pesticides, and we all became ill, so we decided not to use them. And once in a while, we'd have to eat around a worm in an apple, or something like that.

And here's what I'd like to finish saying, following up the 10,000 gallon purchase of malathion by the city, I would like to say here, this is a quote from Mr. Spaugy. He says -- excuse me, it's from Paul Papanek. This was Tuesday, February 13th. This is a protest from Mad Moms Against Malathion in the City of El Monte. It

says:

> "Just a couple of days earlier, Cuddy laid out a pattern of illnesses, and Dr. Papanek had told her ..."

He's the chief. Of course, you know who he is, of County Toxics and Epidemiology. He told her, this is Mrs. Cuddy:

> "... that the only way to ensure the safety of her children was to leave town for 36 hours."

I'm really not able to do that, myself and my children.

I'd like just to thank you for hearing me today, and I hope that we can pursue the eradication of the Mediterranean fruit fly in other ways. I think these articles have proven true, that we have to stop it at the travel. The Agriculture Department says that's how it gets in. And quarantine, and airlines, and the mail.

Thank you very much.

CHAIRMAN ROBERTI: Thank you, Dr. Cabot.

Fred Krauthamer.

MR. KRAUTHAMER: Mr. Roberti, and Members of the Committee, Fred Krauthamer, 501 Madera Street, Monterey Park. I'm speaking on behalf of myself.

I'd like to say that I -- in leaving this committee meeting and going back to Los Angeles, I'm coming at a time when they are going to be spraying at the spot

where I'm going to be let off. And I must say that I'm very anxious.

This shows you how much determination I had to come and testify here. That I'm even possibly endangering myself, because I consider it a grave health danger to be involved in the pesticide spraying.

When they spray my house, I leave. I just leave. My family and I go someplace else outside of the spray area.

I recall one time when they didn't spray because of rain, and then they decided to spray on a Friday night, which was never done. I didn't even know about it till the last minute. Friday night is the night people want to go out. It just spoiled and ruined my plans for that whole evening, because I didn't want to go out and come home while the helicopters might be on top.

I think this is just a pure violation. They talk about human rights. I'm concerned about my human rights. I don't want helicopters with all that noise, with all that aura of association with war, coming over on top of my house, making that noise and dumping that stuff on my property, endangering myself, as far as I'm concerned, and my family.

Going over to another aspect of it, and one that is of grave concern to me, is always the cleanup. We were sold a bill of goods, many of us, on nuclear energy and what it was going to do for us. Nuclear weapons and how it

was going to defend us. Now we see getting rid of the nuclear weapons presents a problem of proportions that the human beings are finding very difficult to face. We don't even know where to put the -- the federal government doesn't know where to put the radioactive wastes.

Many of the savings and loans got involved in junk, and now our federal government's going to spend anywhere from --

SENATOR CRAVEN: Mr. Chairman, this is not relevant to the issue.

MR. KRAUTHAMER: Okay, I'll cut it.

What I'm trying to -- I'm associating it now with pesticides.

We are applying pesticides in the fields. We're applying pesticides with malathion sprayed over the ground. It has to go somewhere. These pesticides applied in farming, these malathion sprayed over our homes, and the streets, on the lawns, in the playgrounds, has to go somewhere. Somewhere along the line there's going to be a cost. Someone is going to have to eventually clean this up. When that cost arrives, the fruits and vegetables we have today, which we think are cheap, if you count the cost of health for people who get sick, if you count the cost of the cleanup later on of our soil, our water, our air, as a result of the use of pesticides, we're in a problem.

The Department of Agriculture should be seeking alternative methods. They are there. And I think through

that I would hold the head of the Department of Agriculture responsible. They should call in the professionals, people who are honestly dedicated to the eradication.

And I don't even know if we can eradicate. That's another thing. Why are we out to eradicate?

We found that use of DDT, we found out that they built up immunities, and we got new strains that were even worse of different bugs that DDT served.

I don't even know if malathion even eradicates it. I have even heard scientists even question that. There are serious questions about this whole thing that's being done, and I would say that not enough research was done by the Department of Agriculture. And I think there are too many doubts, too many questions.

I think we ought to have someone in there -- we need someone fresh. We need someone new. New things are happening all over the world today. We need something fresh, something new. We need clean air, clean water, and especially clean cities.

CHAIRMAN ROBERTI: Thank you, Mr. Krauthamer.

Madeliene Regele.

MS. REGELE: This is my son, Mr. Voss. My name is Madeliene J. Regele. This is Adam Regele. He's four years old.

Good afternoon, everyone, and thank you for hearing me this afternoon.

I was going to tell you that we are under siege

in Southern California and that we are being sprayed with poison, but you know that.

I was going to tell you that our children cannot go out and play and roll in the grass, and put their hands all over play equipment, but you know that.

So, I would like to speak for two groups who have not sent anyone here officially, and that is the children and the animals.

I am a practicing mother, and I am a practicing horse and stable owner. I run a business in Sun Valley, California, and we have been sprayed, and we will be sprayed tomorrow. And I'm glad that we're here.

We will miss this time, but we will not miss the next spraying in 21 days, nor the one following every 14 days, or after that we're scheduled for every 7 days until September.

These two groups do not have anyone official to speak for them. I live in an area where almost every homeowner owns horses and dogs. There's one street called Latuna Canyon which is all stables. They are starting to come to me for information. They are scared; they are upset. Most of all, they are very angry.

We cannot always take our animals inside, which is what we were told to do by the State of California. I have 14 personal horses of my own, and I cannot bring them in my house, and I do not have a closed barn for them. They are outside, and they will be continually dosed with

this blanket of poison.

I have one neighbor who owns 20 lamas. These lamas do not cost anything less than $10,000 each. They're outside. She does not have them in an enclosed structure.

Who is going to be responsible for the economic suffering that we undergo when our children become sick, when our animals become sick, and when we lose one?

We are told by the farmworkers of California that they are discovering clusters of children who have cancer from the pesticides and the insecticides that they have been living with all their lives. My heart goes out to them, as I'm sure it does to all of you, but I do not want this son nor my other seven-year-old son, who is also here today, to be one of those statistics.

Thank you very much.

CHAIRMAN ROBERTI: Thank you very much, Ms. Regele.

Our next witness will be Herman Mulman, after which we will take a five-minute break, and then conclude with the rest of the witnesses.

MR. MULMAN: Thank you, Mr. Chairman and Members of the Committee.

My name is Herman Mulman, and I am President of Seniors for Political Action, and the Legislative Chairman of Seniors for Action. We are in the North Hollywood-Van Nuys and San Fernando Valley.

We demand that the malathion spraying cease at

once. We are not asking; we are demanding.

Our organization reflects the sentiments of over hundreds of thousands of seniors in the Los Angeles area, and we are angry and upset by this arrogant abuse of power.

The spraying is having a disastrous effect on the fragile health of seniors. I'm 72 years old, and in my organization, they look upon me as the young kid. So, we have a lot of old people. And the last meeting we had -- we meet every Thursday -- 15 of our members did not show up because they were ill, and they had sprayed two days before.

The day before I came down here, a Monday night, they sprayed my house for the third time. My daughter could not go to her junior college classes because that Tuesday morning, she said she was nauseous.

Now, what -- when you have aerial spraying in certain designated areas, as they call it, they do not take into account what I call contiguous areas. Is there a curtain that they put down that it won't go past when they spray? Or does it drift? And how far does it drift? They don't know, and they don't care.

I live one block from a shopping center that closes at 10:00 p.m., and that's -- the spray starts at 9:00 p.m. in our area, and hundreds of cars are on the parking lot getting a full dose. Earl Sheib must salivate when he hears those helicopters.

Thousands of night students at Valley Junior

College and CSUN are repeated victims.

How come they didn't spray the Crystal Cathedral? I think Governor Deukmejian should, through an executive order, name every house in the State of California a Crystal Cathedral, and then we'll solve the spraying of malathion.

They didn't spray the zoo, the L.A. Zoo. They didn't spray the Santa Anita Race Track. Now, that's interesting information.

I'm not going to go into a long pros and cons on the issue of this out of control program. As far as we're concerned, debate is past.

We feel that we are concerned -- we are so concerned that we have named Governor Deukmejian as the captain of the new Titanic, and he is going to take the responsibility for sinking his Republican ship of state. It is his responsibility, and they are not going to get away with it.

The seniors are angry, and they're going to react politically. If this body does not take the necessary action to halt this debilitating spraying program, then they will feel the political wrath of the seniors, and this I promise you.

CHAIRMAN ROBERTI: Thank you, Mr. Mulman.

We are going to now recess for five minutes.

[Thereupon a brief recess was taken.]

CHAIRMAN ROBERTI: The Committee will come to

order.

Our next witness is Randy Fullerton.

MR. FULLERTON: Ladies and gentlemen, I'd like to take this opportunity to thank you for given me the chance to speak before you today.

My name is Randall J. Fullerton. I also live in Burbank and the North Hollywood area.

I'd like to take this opportunity to approach this from a slightly different angle, if I may.

In 1984, I worked at a company that most of you may or may not have heard of by the name of Lockheed in Burbank, California. At that time, we were forced to use many, many dangerous solvents. We were told at the time by Lockheed employers that these chemicals were, indeed, safe and not hazardous.

I became quite ill. The effects of these chemicals are cumulative. Daily the symptoms would increase and get more severe as time went on.

Cal-OSHA, who I called at the time to find out if there were any other people having problems along the same nature as myself, told me and assured me in no uncertain terms that everything at Lockheed was okay. They inspected there quite often, and that Lockheed in no way would use any toxic chemicals that would hurt anybody.

Four years went by before the story finally got some recognition. There are since hundreds of lawsuits. there are deaths reported, cancers reported.

The Senate Subcommittee on Toxics in the Environment and Workplace has found that the chemicals that I was exposed to -- because I had no way of knowing what I was using because Lockheed conveniently removed the labels from the cans that we were using. Subsequent investigations has found those chemicals to be: trichloroethlyene, benzene, methylethylketone. A couple of those you probably will recognize as now being considered very, very cancerous.

Mr. Voss states that his farm is okay. They eat the produce off of it; they drink the water off of it.

Well, that is all well and good for Mr. Voss in his area here in Central California.

We live in an area, Los Angeles, that has some of, if not the worst, air quality in the country. I live in Burbank. We have been sprayed six times. I was sprayed Monday night before we came up here. We left our vehicles in Pasadena, which will be sprayed tonight when we get back tonight. Tomorrow night, the Burbank area again will be sprayed again. So that's three sprayings in less than a week.

Less than two weeks ago we were sprayed again twice in one week.

According to the AQMD, Burbank has the third worst air quality in the Los Angeles County area, if not Southern California. Burbank is also rated number one in benzene content in the air. I understand through the

application of malathion through aerial spraying, the process of breaking it down into a fine mist contributes to the factor of increased benzene content when it breaks down.

I would be very curious to know if Mr. Voss, or anyone else in this vast arena of public health services, Agriculture Department, can tell me and assure me and the fellow residents of Burbank, and the surrounding area, just what does malathion do when mixed with benzene, trichloroethylene, and all these other 92 million pounds of toxic chemicals that were released into our air by industry in 1987, according to the EPA.

We find it very interesting that before they spray, there is no announcement of any new medflies found in any of the surrounding areas that are sprayed. They have sprayed so far approximately 400 square miles, covering some 10 million people in two counties, with over 10,000 pounds of pesticides.

I don't think there's any dispute whatsoever by any of the members, the experts, on either side of the situation that malathion is a toxic. It is a toxic chemical.

The question at hand is the application and the amount that is being sprayed. We feel that there is no safe level of any toxic or cancer-causing chemical. And when you put these chemicals in conjunction with all the other known carcinogens that are in the air, in the water,

in the area, I find the situation just mind-boggling.

Burbank has had to close -- Burbank, when I was growing up, had the reputation of having some of the best water in the country -- or the state, if not the country. They have since had to close down seven of the ten water wells in Burbank and import their water from the Metropolitan Water District because of contamination, the main contributor being Lockheed and the surrounding plating and aerospace industry companies who dump their solvents and toxics right into the groundwater, down the drain, so to speak.

We would like more confirmation, one way or another, to know exactly how it, the medfly, survives in the cold weather. We understand there's a great deal of evidence supporting the fact that, in conjunction with the spraying, et cetera, the reason the medfly was eradicated in Northern California in '81 and '82 were because of cold snaps that were prevalent in those times.

We feel that the medfly does not exist well in certain temperatures below a certain degree. I would like more information on those temperatures, if we could find that some how.

We have had, on and off, infestations in California, so-called infestations, since 1975. I would like to know why, 15 years later -- 15 years later -- we're still looking for ways to introduce the sterile medfly into this area to help eradicate this problem?

We understand that in Hawaii, they're breeding 100 million sterile medflies a week. Why are these not being used? Why was a proposed installation in Mexico to breed sterile medflies for this problem not implemented and used today?

We would also like to know why it is that the facility was proposed for Mexico and not California. One of Lockheed's famous practices during the time was to load their toxic chemicals into drums, and they would leave them sitting on the docks, baking in the sun, to where the 55-gallon drums would bulge to the point of looking like a football. They would load them up in the middle of the night and cart them down to Mexico for inconspicuous dumping.

We have a study conducted in Glendale, which is a sister city next door, a neighbor city next door to Burbank, done by a birthing clinic, where they study miscarriages and birthing rates, and that sort of thing. And over a year period, they averaged 9 miscarriages. In the three months after starting spraying since November, they have had 12 miscarriages. It is directly attributed to, by the head of this birthing center, to correspond directly to the times directly after the spraying of the malathion.

People's sensitivities vary to these toxic chemicals. They're almost like a fingerprint. Some people may not be affected health-wise; some people may be

affected moderately. Others among us are affected severely.

What I find incredibly -- I can't even find the word for it other than outright blatant arrogance -- is the fact that we are repeatedly told these things are safe, and then years go by, and the experts, so-called experts, decide on the -- take the side of industry, or agribusiness, are continually proven wrong at the expense of the people.

People are dying and getting sick. And this is the reality. This is not a fallacy; this is not an imaginary situation.

I work with the hotline with Adelaide Nimitz, and we must handle 50-100 calls a day easily, easily, at the absolute minimum. And these people's concerns are very, very real, I can assure you. We speak with school board members. We speak with school teachers. We speak with school nurses. We speak with psychologists who see patients, and that alone causes them an immense amount of aggravation and frustration.

I concur 100 percent with Senator Roberti's assessment of the political leadership of this state a la Deukmejian, Mr. Voss, Papanek. It boggles my mind.

I would like to take a moment, if I may, just to read a quick little article that appeared in the Los Angeles Times in regards to an EPA study that was just released:

"HIGH PESTICIDE LEVELS FOUND INSIDE HOMES"

"Pesticides may travel long distances through the air and become trapped in homes years after they were applied, a study issued in Washington by the Environmental Protection Agency suggested. Monitoring of 259 homes in Jacksonville, Florida and Springfield, Mass. for 32 substances used in farming and consumer products found the indoor levels of some chemicals to be 50-90 times higher than the levels outdoors. Consumer products included bug sprays, disinfectants, termites [sic] and chemicals."

I would also like to quote a study that the Honorable Senator Petris was part of recently that states:

"PESTICIDE WARNINGS IGNORED."

"Californians are at risk from hundreds of pesticides because state scientists are being ignored by bureaucrats supervising them, the State Senate Office of Research charged. Scores of pesticide

products now sold in this state have not been adequately reviewed and lack proper warnings on their labels because scientists at the State Department of Food and Agriculture have had their studies altered and recommendations rejected by nonscientist administrators, the report by Senate researchers said. The products include: medicated shampoo, pet sprays, paint, disinfectants, as well as household and agricultural pesticides."

I'm almost left speechless. My tax dollars -- I'm an honest, taxpaying American citizen who grew up to believe in our leadership, that they would protect us. I would die for this country because I believe in this country.

But this country has let me down. When I worked at Lockheed, and people told me that the chemicals that I was using were safe, and I wasn't given any protective gear, I knew better in my heart of hearts, but I needed that job because things are expensive and tough, and I was just that far away from being homeless myself.

Well, they lied to me. They lied to me bold-faced and cold-hearted. And now I am a ticking bomb waiting to go off to find out what the future holds for me

in regards to my cancer.

I am sick and tired, as we all are, of the bureaucracy ignoring the will of the people that put them in office to begin with. We have statistical evidence showing that well over 60 percent of the people oppose the aerial spraying of malathion. We are dumping 10,000 pounds of chemicals on over 2 million people, and I find this situation abhorrent.

If Mr. Voss wants to spray his peaches, let him and more power to him. But don't you dare insinuate that you have the authority or right to spray me and my family, because I am not willing to have my life taken by you or this kind of propaganda, this kind of lies.

I will give my life willingly for this country in defense of it, and for the freedom, the liberty, and everything else that goes along with it, but how dare anyone in this panel or room assume that they have the right to spray me, as a chemically sensitive person, having gone through this for six years and not been listened to, and lied to, and cheated out of my freedom.

I don't appreciate it. I don't like it. And if it continues, you can be assured that we will take action to vote these people out of office.

We're extremely nonviolent, and we don't want to offend anybody. We want agriculture as much as anybody. We know how important it is to this state.

But so are the people. And the people are tired,

and they demand to be heard.

Thank you.

CHAIRMAN ROBERTI: Thank you, Mr. Fullerton.

The next witness is Phyllis Rabins.

MS. RABINS: Senator Roberti, Members of the Committee, for every man, woman and child that you see in the audience today opposing Mr. Voss's confirmation, there's a small army at home who are not able to be here but want the message delivered to you.

First, I want to thank Senator Torres for having the courage and the wisdom to come out against the spraying. He feels that he health and safety should come first, and he's right. But he had his smarts before anybody, because he was fighting pesticides years ago.

This program is a disaster. You know how smart that fly is? Well, that fly is so smart, it never goes to Governor Deukmejian's house in Long Beach, and it's so smart it never goes to Pacific Palisades or Disneyland.

Now, this program has been run so badly. My -- people in my area have become very ill. I also have a long list of people who have become sick.

A very good neighbor nearly died. He happens to be one who's outside in the yard, always working. And he became so ill that he thought, well, maybe it's better if he did die.

Now, there are people in my area that have ended up in emergency hospitals. And there's a young man whose

son got caught in the spray, and for two days he couldn't even walk, and that's because it's a nerve gas.

Everybody's got the flu, the malathion flu, or colds that they can't get rid of, and they just don't go away. They just feel plain lousy.

Now, I've had to change my life style. I was walking every day near a park, and I found that I was getting sick and I was getting sicker. So, I finally had to quit walking for days after the spray and go to an enclosed mall. And I don't like have to do that.

Also, I live near a toxic dump site, so we are exposed to the synergistic effect of combining malathion with all the carcinogenic chemicals that are coming out of that dump site.

And you mentioned, Senator Roberti, the Santa Clara Valley being sprayed. Well, it's really ironic, because my son lives in that area. And he was sprayed over and over and over again. And I really became a paranoid mother. Everytime that he was sprayed, I really had nightmares, and he said, "Well, what would happen to you, Mom, if you were being sprayed?" And I was so naive I thought that day would never come.

Well, here it is, and I think I have double anger toward Mr. Voss and everybody who is behind this crazy program, because they haven't done a thing about eradicating the fly.

And I feel this way: if Mr. Voss doesn't mind

spraying his -- exposing his family and spraying his orchard, go right ahead. But why don't you ground the choppers so that they're not going to be spraying us?

And also, I'm really very upset because you're all being told to take the words of three doctors about how safe it is that we're being sprayed. The first one is a Dr. James Stratten. Now, in 1983, Dr. Stratten testified before he Air Quality Management District, and he told them vinyl chloride coming out of Operating Industries in Monterey Park was safe. And all of us that testified to the effect, "please close that site," our word -- it didn't do any good. They went by Dr. James Stratten.

Now, when the EPA said that that site is one of the most hazardous in the United States, that shows you how qualified Dr. Stratten is to tell you about malathion.

Then you've got Dr. Paul Papanek of County Health Services. Now he also tells us that a little bit of malathion is safe. But he doesn't tell you that he was supposed to do a study of a cluster of cancer cases by the dump, and he also was supposed to do another study of people in Montebello and Monterey Park who live near the dump, and they did a health study and found that there was one area that has abnormal amounts of cancer. That's my area. And he never came back, and he never did any of those studies.

Then you've got Dr. Kizer. Dr. Kizer, he said that our site was so safe you could build a shopping center

on it. But Senator Torres was smarter than he was, and he thought to make sure that we didn't build the shopping center. And when the EPA did the study, they found every toxic chemical around at that site.

So, you'd better get some other doctors, and you'd better stop the spraying.

I feel that this program is so incompetent. My area's supposed to be sprayed, like everyone else's, every 21 days. Now, I'm going to be sprayed tonight. That's two weeks and one day from the last day I was sprayed.

So Mr. Voss, would you please stop the spraying. Somebody in your office made a mistake, and we don't want to be sprayed tonight.

And then, I also have to say I vehemently oppose his confirmation.

Thank you.

CHAIRMAN ROBERTI: Thank you.

The next witness is Oscar Singer.

MR. SINGER: First, I want to thank Senator Art Torres for having made it convenient for many of us to come up from Los Angeles.

I'm Oscar Singer. I live in City Terrace, Los Angeles County.

I was a meteorologist in the Air Force, and I wrote several text books on meteorology.

The thing that keeps popping back all the time, and I'm getting a little bored with it, I asked Leon Spaugy

of the County Agricultural Committee at a press conference on the 9th of December: if we had sufficient sterile flies, would that end the medfly problem once and for all? I asked it, and he said yes.

Then I repeated: then the only problem is having sufficient sterile medflies. He said yes.

Now, at the L.A. County -- at the L.A. School Board hearing that they had last week, Leon Spaugy was there again. And he stated a little more positively that there are two ways of eliminating the medfly. One is with the malathion spraying, and the other is with sterile medflies.

So, I'm tired of hearing the problem of medflies being a problem, because it isn't a problem. And the greatest authorities we have, the L.A. County Agriculture Committee -- Commission, it can be wiped out completely [sic].

Now, the sad feature about all this is, in 1959, the screw worm fly was a serious infestation in the southeastern United States. Florida set up a plant where they produced 50 million screw worm flies, and they eliminated the infestation completely 31 years ago.

This is 1990. We're still spraying with malathion. And Spaugy knew that sterile flies do it, and I think Mr. Voss knew that it would take care of the problem.

So, I'm tired of hearing that the medfly is a problem, because it is no problem. It'll be eliminated

with sterile flies.

Now, they have a plant, supposedly, coming on that can turn out 500 million flies a week in July. How much does it cost? The testimony in front of L.A. City Council hearing a couple weeks ago, $5 million. How much have they spent so far with the malathion? $25 million.

I would suggest that they take and throw $5 million or $10 million at this plant, the building in Hawaii, and put it on a 24-hour schedule, and we should be able to have sterile flies this month.

And this happens to be winter time. Now, in winter time, the medflies reproduce -- their life cycle is about 2-4 months. In the summer, when it's about 75 degrees, it's every 3 weeks.

There's no reason why there can't be an emergency appropriation made now to put that on full-scale production, and we could have it within a month. It's winter time. There's no possibility of the medfly expanding at any great rate, and we will have sterile medflies on line.

Now, just a couple of side issues. There is false information given out in the literature they pass out to people before the spraying. One of them is that you can't breathe it in; the drops are a size you can't inhale it.

Well, when it leaves the airplane, it starts evaporating -- any liquid starts evaporating -- so it

really gets into the air. When it hits the ground, it continues evaporating; it falls on dust and attaches itself to dust particles, and dust particles are blown about by the wind. So, you can breathe it in; you can get in your skin, and your throat, and your lungs.

But that's not all. They're spraying everywhere. It falls on all the highways and the freeways. All the cars that are driving up and down the highways are churning it up and making a cloud of malathion.

Now, we live in the hilly, mountainous area in Los Angeles County. Everybody that lives up against the mountains has worst pollution than everybody else, because all the crud from the city drifts in that direction. And L.A. is one of the worst areas to start with, but the people up against the hills -- from Westwood, Beverly Hills and Burbank -- they're getting a double dose of pollution. That's common knowledge.

Now, whenever they're spraying in those areas, when Pasadena gets sprayed, guess what? Everytime it's sprayed anywhere else, we're getting a drift, because there's a drift of pollution and there's also a drift of malathion, and some are getting a double dose.

Now, another sinister statement in the leaflet they pass out is saying that you don't have to cover your swimming pools. So much water, it can't possibly hurt. Why do they pass out that kind of information? They're threatening to spray every week.

Now, it is known, it's documented, that malathion, when it is dry and it falls on the ground, will maintain its potency for a week. But when it's wet, it maintains its potency for a month. They're going to spray every week; in a month's time, you're going to have a build up of four times the spray. But a little worse than that. Because of the way the malathion comes out of the plane, there's no way it can be spread evenly. The turbulence of the rotor, the buildings, mountains, hills, there're going to be certain spots are going to get an unusual dose of malathion, and certain spots are not getting any at all. Lethal bullets are being fired. Certain areas are getting a very heavy concentration of malathion.

Now, a swimming pool might just happen to be, depending on the direction of the helicopter and the direction of the wind at the time, they may get a gigantic dose in that particular swimming pool, where another one might not.

Now, let's look at the consequences of this. A build-up of malathion -- incidentally, in chlorine, with chlorine in the pool, and malathion is oxidized to maloxine, which is very deadly, and chlorine hyperchloride is an oxidizing agent, so it turns the malathion into maloxine, which is very deadly. And there's also chlorine floating around, and it's inevitable in the chemical reactions that there's going to be chlorinated organophosphates, which is -- they're being banned all over

the place. They're very dangerous, chlorinated organophosphates.

Now, let's look at the consequences. A child goes into the pool, and it'll paddle around for two or three hours, and their whole body is exposed.

Now, the reason fish die in water because of malathion is because they're breathing in the water continuously with their gills, and they're filtering out the malathion.

Now, I can see a child paddling around in the water for three, four, five hours, getting it in his eyes, and that's one of the first things that malathion affects is, it affects the eyes and you get myopia. That's been well established. They get it in their throat; they get it in their ears.

But wait a minute. That's just one day. They might be going in every day of the week. And their body is being continually exposed to whatever malathion is in there. They're being exposed to it continuously.

Now, why do they put out in the fliers that they pass out to the people that your pools are safe?

Now, I can go on, but I just want to ask Mr. Voss one thing. I happen to be an organic gardener, and I have lettuce, and I have parsley and celery. And they're going and dumping malathion on my celery and my lettuce.

Will you pay me for -- they're damaging my lettuce. I can't go and wash all the leaves off or the

sticky goo that's put in their with the malathion.

Will you please pay me? See that I get paid for it? And everybody else that's getting their property damaged.

And also, I think, you know, they're going to spend millions of dollars, I understand, on a P.R. program down in the Los Angeles area, telling people how wonderful malathion is.

And I do think that the farmers do need protection. In other words, they need support of some kind, but it is in the public interest that we have good farming.

But at the same time, when you crank in what it takes to protect the farmers, crank in the fact that you damaged my lettuce, and you're damaging all the car dealers -- there are thousands of cars in the car lots -- that this can be 20 times they're going to have to wash all their cars. They're not being paid for it.

So, please, have you made arrangements, just out of common sense or kindness, to see that these people get paid for the damages, including my celery?

Thank you.

Oh, there's one last comment. I want to thank Senator Art Torres for having proposed the bill and a state initiative which will help solve the problem.

But I also have reduced -- introduced an initiative. As of the 6th of February, I happen to be one

of the original starters of SAFFE -- Safe Alternatives for Fruit Fly Education in Los Angeles County. And we have sent out petitions, and we have at least 20,000 people who already signed the petitions, pressing to halt the spraying. And it comes into my post office box, and we're getting 30, 40, 50 letters a day with 24 names in it. We're getting a thousand signatures a day. This has been going on now for week after week after week, so it's accumulating. We've lost track of the numbers; we have a pile. I really should have brought it down here for you to see, or possibly I can arrange to send you copies of it.

So, this initiative that I filed the 6th of February, there are just four main points in it.

One, it removes the authority of the Governor to declare a state of emergency. In so doing, it makes it possible for people to sue when they've been injured.

Second, it will require permission of the property owner before any aerial or ground assault can be made with chemicals. If the property owners okays it, fine; go ahead. The pesticides are now all right.

Third, drift of any kind is absolutely prohibited. If somebody wants to use pesticides and poison, use it on your property. And if it's going to drift, don't use it. It's up to you to see that it's used properly. I can't have a tree growing in someone else's yard. I have to cut the branches off, so they can make me take it off.

And the last thing is, which I'm very -- which is quite novel, the inert ingredients are more deadly than the malathion. It's supposed to be 5 percent, and there is a state law which says the inert ingredients do not have to be identified. There's another state law, just a couple lines down the law, that says they can change the amount of the inert ingredients without notice, especially in a state of emergency.

So, the inert ingredients have been identified to a certain point, but they include benzene, DDT, hexachlorophene -- you wouldn't believe it. The list is simply incredible. These are -- some of these have been banned. And these are inert ingredients? They're spoofing the English language.

So, I'm very -- it was most unusual that -- and this is one of the things in the new initiative, that they will have to list the inert ingredients. And if they try to invoke a constitutional attack against this initiative that the federal laws override the listing or the labeling of toxic ingredients, there is a statement in the initiative itself that says that the people of the State of California will not purchase or use any pesticide or any economic poison that does not list the ingredients. That any consumer has the right to decide what he wants to buy; he can set the requirements. So, that is also one of the features in the initiative.

I thank you for your interest in trying to do

something to solve the problem.

CHAIRMAN ROBERTI: Thank you, Mr. Singer.

Any questions?

Janet Anderson.

MS. ANDERSON: I promise I'll be very short.

My name is Janet Anderson, and I am a resident of Canoga Park in the San Fernando Valley.

We have not been sprayed yet. I am here representing many, many people from the area that has not been sprayed yet. This is not just localized to the areas that have been sprayed.

Anyway, I don't need to go into any of the technical stuff, because that's all been covered. But I would like to say that I liken this to the days of blood-letting. It took many, many thousands of people dying over centuries before they woke up and realized it was killing them. Killing us. And now we read about it in our history books. And we say, what a shame.

Now, we refuse to allow our children to be the next statistics in the history books. What we forget is, those numbers in those books are human beings. And we can't forget that. Our future history books are going to have our children, our children -- yours and mine -- in them as the ones that had to get sick and die.

And I refuse, and we refuse, to allow that.

Now, I just want to ask, how many years will it take this time? How many sick or even dead will it take

this time?

We must always remember that we're talking about human beings, and learn from our past mistakes. We've got to protect our future.

Those of us in the area that have not been sprayed are equally opposed to the confirmation of Mr. Voss. We are angry about his pesticide stand, and we do not want to continue in that vein.

And I would also like to urge the passage of Senator Torres' bill 1823.

Thank you.

CHAIRMAN ROBERTI: Thank you very much, Ms. Anderson.

The next witness is Mr. Clifford Tasner.

MR. TASNER: Mr. Pro Tem, Members of the Committee, and Senator Torres, my name is Clifford J. Tasner. I'm a resident of Burbank, and oddly enough, a voter in Senator Roberti's district.

I've been very concerned about this malathion spraying, and what actually got me very invigorated and involved was, after the last spraying -- this is our sixth spraying as of Monday -- but the spraying before it, two of our finches died. Actually, finches are relatives of canaries. There's been a long tradition of having canaries in coal mines to find out if there were any toxic gases. They were inside at the time when the malathion was sprayed.

We also have a couple dogs, and the day after they sprayed the last time, one of our dogs got a rash on her stomach and started regurgitating all over the yard. The other dog developed an odd nervous tic. My wife seems to have developed an odd nervous tic that seems to go away about four days after they spray.

I'm also asthmatic. Shortly after they spray, I find it very difficult to walk up a flight of stairs. I'm physically fit; I just have trouble breathing, especially after the malathion.

So naturally, I wanted to find out more about the malathion, and find out what was going on, was it safe. So I attended the Los Angeles City Council meeting at which Dr. E. C. Siddiqui and Dr. Stephen Ross attended and spoke.

And from what I now understand, the decision to spray the malathion and the decision that it was a safe chemical to use for the medfly eradication was made on the basis of two reports, one of which has been discredited by Dr. Mark Lepay, who was one of the co-authors of the report, saying that some of the information in the final published version has been filtered and does not reflect his own findings, which is that malathion is not safe.

The other report specifically dealt with birth weight of babies born in Santa Clara during the last spraying, and did not actually include any long-term affects nor ever then number of stillborn births at that time, which I am given to understand were slightly higher

than the surrounding areas that were not sprayed. Dr. Stephen Ross of the World Health Organization mentions about 200 reports worldwide that suggested malathion is not safe. It is a toxic.

I realize people use it around the house. I realize you can buy it in the store. I realize the farmers in this state are suggesting that it's a perfectly safe chemical to use.

However, you can buy it in the store, but you can't legally dispose of it. You can't legally pour it down your drain. And oddly enough, the Burbank Fire Department recently refused to spray off a school playground because it is not legal to put malathion in the water system where it can kill fish.

There have been no follow-up studies as a result of the health effects in Santa Clara County. It was ten years ago that this spraying occurred. It would be very simple to go in there and find out has malathion had any mutagenic effect. Have the rates of cancer gone up. Have other diseases that might be connected with the spraying of -- you know, long-term spraying of malathion, shown themselves. We could go in there now.

The bug was found, as far as I understand, on July 20 of last year. Only now, it's already February, are we discussing the idea of getting actual medical doctors involved in the process of spraying the malathion. As far as I understand the Agriculture Department has a lot of

respected entomologists fighting the bug. What about health specialists who can look into this?

And the farmers in the state, I recently read an article in the L.A. Times from the point of view of the farmers. They don't understand what's the hub-bub. Why are we all upset about this. What's the problem. They use all kinds of chemicals on a lot of their crops.

But the problem I'm having is, since there doesn't seem to be any actual viable evidence to suggest that the long-term aerial spraying of malathion is safe, how can we then proceed? Shouldn't the first thing to be done after the bug was found -- and I realize there's a legitimate concern to eradicate this pest in California -- but shouldn't the first objective to have been to establish whether or not beyond a complete, you know, total shadow of a doubt that this is safe, safe thing to do. There is not enough evidence. The two studies they're citing don't seem to be strong enough.

To reassure those of us who are being sprayed, it would be quite nice to see some evidence, to see some follow-up in Santa Clara that the cancer rates have not gone up.

And I'm concerned that Mr. Voss will not look into these kind of considerations as he chairs the Agriculture Commission.

Just to finish up very briefly, as far as I know there's an EPA report on malathion that suggests more

information is needed to establish whether it is safe to be using for this kind of thing.

And I'm also very concerned about a $3 million ad campaign that is being mounted to sell us on the idea of using malathion. I would prefer, perhaps, to use that ad campaign to inform people about not transporting fruit across state lines, not mailing fruit. It would be much more effective in fighting the medfly, rather than just getting us comfortable with something that may not be working.

Thank you all very much for your time.

CHAIRMAN ROBERTI: Thank you, Mr. Tasner.

The next witness is Virginia Johannessen.

MS. JOHANNESSEN: Thank you.

Like Mr. Voss, I'm a third generation Californian. My family started farming about 20 miles from here in 1950, and only recently, when Trammel Crow showed up, did we discontinue that.

And I hope you have as much luck with your farm.

My concern, really, is whether Mr. Voss is ready to lead California agriculture into the 20th Century -- 21st Century, and whether he's adequately market-oriented.

Right now, California agriculture enjoys a very, very privileged position in that we don't really have much competition for the products we grow here. I don't believe that will always be the case.

The world is getting increasingly competitive,

and as you know, several major nations just joined the capitalist system recently.

I think that we need to look forward, and what's happening here is a symptom of what you're going to see perhaps 15 years out, perhaps one year out. We may look very hysterical, but we represent about 5 million people in Los Angeles who are very upset about pesticides, and I think beyond that, we represent most of the consumers in America and probably in the nations we export to right now.

I'm sure that many of the farmers, you know, look -- dismiss this as some sort of a fluke among hysterics from Los Angeles, but I think it's very important that California agriculture keep in touch with their market or they're going to be drastically hurt when the consumers just pull back. I mean, ask the farmers who grew apples what happened when Alar was dragged off the market promptly. It was not a gradual period of legislation. It was something that the consumer did promptly. And I worry that other pesticides will have the same thing; it'll be the California farmer that is hurt.

The new proposition that's coming out allows 5-8 years for the gradual taking of the pesticides off the market. I don't think it will happen that way. I think it will happen very abruptly when consumers just stop buying the product.

And I would be very worried -- you know, our little problem with the medfly will go away; the malathion

will go away. But if Mr. Voss is in a position to not lead California agriculture into reduced pesticide use, where are those farmers going to be when suddenly what they're depending on is yanked off the market, not taken off gradually, or when their markets just dry up because they've been encouraged to produce a product that no one wants any more?

It's too big an industry; it's too big an export industry which the country needs so desperately to have it be looking 15 years backwards rather than 15 years forward.

Mr. Voss, I hope you can tell us today what your plans are to make California agriculture a modern industry rather than one that really has not changed since I was born. You know, I see the same chemicals on the market, plus new ones that probably even worse.

I hope you can give us some indication of how you're going to make that switch. And if you can't, I sincerely think that this panel is doing a disfavor to the farmers, to the country, and to the state to not have California be looking forward in just a major industry.

Thank you.

CHAIRMAN ROBERTI: Thank you, Ms. Johannessen, and I want to add my remarks to what she indicated.

I hope in your testimony in rebuttal, Mr. Voss, you really do discuss that point. It's been a wonderment to me as to why much of California agriculture just doesn't see this enormous market of people who want pesticide-free

food.

I know it's not possible in all cases, at least not right now, but at least is there some movement, is there some direction? Are the policies of the Department geared toward pesticide-free fruit, if only, as Ms. Johannessen said, for the welfare of the farmer?

So, I hope you address that point. I think she really hit a point which, for the economy of the State of California, is terribly important.

Deborah Glickman.

MS. GLICKMAN: Hello, Honorable Members. My name is Deborah Glickman. I'm from Los Angeles. I have three children, all of them want to go home by now, especially this one.

I've lived in L.A. for 33 years, and I'm one of the people who really likes living in L.A., with all of its ills. And a lot of my family have moved away, and they say, "Oh, Lake Tahoe is so beautiful. How could you live in L.A." But until last January, I have never wanted to leave L.A.

I'm one of the 32 people that traveled from L.A. on the bus; 12 of us were children, and that's why we're here.

Like the others, I'm very emotional about this issue.

We've been sprayed five times, and I'm really --

CHAIRMAN ROBERTI: Where do you live?

MS. GLICKMAN: In Los Angeles, Highland Park.

My children go to school in Mount Washington, but they're sprayed at the same time.

My two-year-old gets a runny nose every time, and it goes away. And some people say, well, it's the flu season, the cold season. But I know my kids, and she doesn't get sick. And it's really odd, because it just happens to come right after the spraying, and then it goes away.

And we're one of the people that leave the spray area. But since my kids go to school the next day we come back, and they exposed anyway.

You said that Agent Orange was safe, and that DDT was safe. And you've even said that it was okay to put Alar in the apples, but we've recently found out that that's not true.

What I'm worried about is in ten years from now, you're going to be telling me, "Oh, yeah, well, malathion after all does cause cancer."

So I'm strongly urging you to vote against the confirmation of Mr. Voss, and asking you also to stop the spraying.

And I have a personal note. You know, one of our main criteria is to get away from the spraying. And we found out that our bus is going to be driving in at 12:00 o'clock in the spray area. And since the Crystal Cathedral, they didn't spray over that, and they didn't

spray over the zoo, I'd really like them to not be spraying us at 12:00 o'clock, or we're not getting off the bus, at least I'm not with my kids.

Thank you.

CHAIRMAN ROBERTI: Thank you, Ms. Glickman.

The last witness I have in opposition is Josh Betta.

MR. BETTA: Thank you, Senator. My name is Josh Betta, assistant to the City Manager for the City of Monterey Park.

I'm here representing the viewpoints of the City Council of Monterey Park.

I'm not here, however, to take a position in the matter of Mr. Voss's confirmation.

I will say that the City of Monterey Park has taken a rather active and visible position in opposition to continued spraying and continued application in the San Gabriel Valley area, and has a continued disappointment with the administrative structure and framework around the spraying effort, specifically the lack of notification to area residents in each and every case of the spraying.

Having said so, I thank you very much for your time.

CHAIRMAN ROBERTI: Thank you very much, Mr. Betta.

Let me ask you a question, Mr. Voss. I'll start it off. I know the other Members, and Senator Torres as

well, would like to ask some questions.

One of the things that concerns me is, some of the witnesses have indicated that there are insufficient studies that the Department of Agriculture has engaged in to do certain things.

What do we know about low-dosage spraying? Do we have health reports as to what the long-term effects are of low-dosage spraying? Have we engaged in any health reports in these areas?

I have a letter here from the School of Medicine of Kitasatu University in Japan. The Professor and Chairman of the University indicated that the Japanese government banned spraying of malathion on its rice fields, and they never spray malathion by helicopter at all.

This is all I have, but it's a letter that did come to me, and it causes me some concern that some governments in the world recognize that there's a problem.

What are our studies on low-dosage spraying?

In Santa Clara County, I understand that much of the spraying took place by hand; it wasn't by helicopter. And yet Los Angeles is being sprayed at a much more long-lasting level, but it's by helicopter and not by hand spraying.

Do we have any studies indicating what the differential is in this area?

One of the gentlemen, I think it was Mr. Fullerton, but I think others have spoken to this point

as well, asked do we have any information as to what malathion's effects are when compounded with other chemicals, especially those chemicals that are already in the air?

Has the Department of Agriculture, over all these years, engaged in any kinds of studies to find out what reactions take place?

What I'm trying to find out is, what groundwork do we have, other than some physicians saying that malathion, in a clinically abstract environment, is safe? What information do we have in the spraying environment that it's safe?

MR. VOSS: Senator, my understanding, to begin with on Santa Clara County, is that about 10 percent of the area was treated from the ground, or the volume of spraying. The area sprayed was primarily by helicopter. Some areas being sprayed up to 30 times during the infestation in 1981-82 in Santa Clara County.

The Department of Health Services --

CHAIRMAN ROBERTI: Do you remember how long a period it was?

MR. VOSS: It was spread out, I guess, over about 15 months, 18 months, depending on the areas as they isolated the infestation.

Health Services monitored the health aspects of the low-dose spraying in the area at the time, along with the Health Department in Santa Clara County. Health

Services followed up two years later as to birth defects, abortions, various effects that might be traced to people who had been in the spray zones and the spray areas of the infestation.

No -- no effects any greater than areas outside of the spray area in the Santa Clara or in the Bay Area were identified.

I don't believe that there have been any recent follow-up studies in the Santa Clara area of long-term effects that may have shown up since 1984.

The dosage that is used is a very small dosage of malathion relative to the way malathion is used in other areas. Its impregnation into the protein bait causes it to drop to the ground with very little evaporation, if you will, into the environment.

In 1981 and '82, the Department monitored air in the spray zone over a course of several months, also in water in the lakes and the various water bodies in Santa Clara County that were in the spray zones. No noticeable difference was found in the air monitoring where malathion was being used than in those areas where it was not used.

We are currently involved in a monitoring program set up in Southern California to try to duplicate those tests that were done in Santa Clara County, and the people involved with air monitoring believe that there are no relevant conditions that would change what we should expect from the results we -- that were had in Santa Clara County

earlier in the decade.

CHAIRMAN ROBERTI: What happens if, after, say, eight months later on this year, we haven't eradicated the medfly? If the medfly comes in once again via airplane, or immigrant population, or whatever, what do we do?

Is the program of the Department just that we spray one more time, and one more time, and one more time after that? Can we eradicate the medfly on the current spraying, or is this something that we get to look forward to ad infinitum?

MR. VOSS: I believe we can eradicate the medfly with the current spraying. We can also eradicate it when we have sufficient medflies through the use of the medfly in lieu of spraying.

CHAIRMAN ROBERTI: Do you mean the sterile --

MR. VOSS: Sterile medflies.

We have demonstrated that in Santa Clara County earlier this year. We've demonstrated it in Southern California.

CHAIRMAN ROBERTI: Doesn't malathion kill the sterile medfly?

MR. VOSS: Yes, sir. That's why we -- in those areas where we had sufficient sterile flies, we put out one malathion bait in order to draw, if you will, a base line, killing all the adult medflies that might be flying around at that time. We then release sterile medflies normally ten days after that spray, and then continue to release the

sterile medfly through what would be two generations or two cycles of medfly, not finding what would be a two generation period before an eradication is declared.

That is what's happening in Santa Clara County right now and in San Bernardino County.

CHAIRMAN ROBERTI: My concern in this state, especially Southern California, Los Angeles County, is it's growing at such a rapid rate with such an infusion of people that maybe there has to be a Plan B of the Department of Agriculture that the medfly is not going to be, on a permanent basis, eradicated.

It can be eradicated, say, in January, or February, or March of 1990, but it's going to come back again. And then that means there's got to be a spraying one more time.

At some point you reach a point of utter frustration on the part of the public. I think one of the women who testified said that they're just not going to take this any longer.

Does the Department have, for the sake of California agriculture, any contingency plan as to what do we do?

I tell you, there's a revolution out there. I know in my district there's a revolution out there, and it's not going to be confined to the boundaries of the 23rd or the 24th District of Senator Torres. It's going to spread like Eastern Europe.

At some point, you'd better have a contingency plan, because people aren't going to take the spraying.

I just don't see any forward-looking attitude that we are such a highly transient society, that no matter how much we try, the medfly will come back again, as it has in most of the European countries.

Is there any kind of contingency plan for what we do, or is it just constant spraying?

Now, I know you have the sterile medfly, but what I'm concerned about is, does the spraying kill the sterile medfly, too?

MR. VOSS: Senator, I think beyond what we have once the fly is here, we tried to have the legislation passed, and finally did last year in Congress, to allow First Class mail to be opened if it met a certain profile and would be suspect of having fruit in it.

CHAIRMAN ROBERTI: I appreciate your position on that, but I personally would rather have the fruit fly than have my mail opened. I mean, that's the way I feel.

MR. VOSS: Well, Senator --

CHAIRMAN ROBERTI: So that's not an answer to me. Maybe it is to other people.

I'm not trying to be sarcastic. I know you are trying to deal with this in a realistic way. But that just doesn't strike me as an alternative in a free society.

MR. VOSS: Let me just go one step further on that.

Jack Parnell has met with postal services on Friday. They have a pilot program that they're going to engage in in Hawaii. The program is using these beagles, snifter dogs, that are trained to scent out those types of products they're looking for. And the dog will sniff mail as it goes through the carousal and indicate if it detects that there may be fruit in it.

We have in Hawaii now all baggage being passed through an X-ray facility that can detect fruit within the baggage. And that's done by the USDA, Department of Agriculture, on people flying out of Hawaii.

There are things being done to lessen and to bring to a higher awareness of travelers the concern and the problem that the medfly can be. Those are long-term issues, undoubtedly.

CHAIRMAN ROBERTI: Does the Department of Agriculture and the Department of Health, once again back to another question, have anything -- I didn't hear you answer this -- on the effect of malathion on other chemicals in the air, in the environment, and toxic things of this nature?

I know that's part of the jurisdiction of the Department of Health as well.

MR. VOSS: To my knowledge, there is none. Personally couldn't answer to it, though, other than to my knowledge.

CHAIRMAN ROBERTI: One of the gentleman has

obvious problems, is toxic sensitive. What happens to him and lots of people who go to certain areas of the state where they don't know what the effect of malathion is, no matter how benign it may be -- which is arguable -- or on people who have other health problems or are sensitive to other kinds of chemicals and with the combination?

I think there should be some looking into this. That's an understatement, I would say.

MR. VOSS: The health officers both in Orange County and Los Angeles County have requested of all physicians in their jurisdiction that the people who may have symptoms, or believe they have symptoms, may have allergic effects from the malathion, be reported so that they can develop the basis of a study to look into this to determine whether there truly is a reaction.

CHAIRMAN ROBERTI: I have one last question, and then I might ask you a few more after the other Members have had a chance to talk.

To get back to a point that I raised after Ms. Johannessen spoke, what programs does the Department of Agriculture have to garner in a whole new market of much more health aware kinds of consumers? Not just a fringe group of people, but I would suspect they're people who form the vast majority of consumers now as far as the purchase of fruits and vegetables, and for that matter even meat that's pesticide and chemical free?

MR. VOSS: We have an integrated pest control

project that the Department is working at. We have very little research dollars, so we support primarily the University of California in its research activities --

CHAIRMAN ROBERTI: They're not doing much.

MR. VOSS: -- with integrated pest control.

CHAIRMAN ROBERTI: I assure you, they're not doing much.

What I'm fearful of, and it's a point that I had mentioned when I had a group of representatives of California industry meet with me sometime last year, and maybe it was a year ago, they insisted they were doing something, but I don't see it happening, and that is, they're trying to diversify agriculture to get it a corner of this burgeoning consumer demand.

California agriculture doesn't seem to be, as Ms. Johannessen put it so perfectly, market-oriented. People don't want to eat pesticides. Whether they're right or wrong, and I think they're for the most part right, but whether they're right or wrong, they don't want to eat them. And they will spend money not to eat it.

Now, why in the world doesn't California agriculture, and the State Department of Agriculture, which, if they ever walked into the city and moved out of the Central Valley a little bit -- it's a lovely place, but come to the city -- and see there are millions of people who want to buy products that are chemical-free, or at least chemically reduced. Come to the city, there's a

The Department says no problem in Santa Clara. I heard enough problems here today from a small number of people who convinced me you have a big problem down there. Can't all be coincidence.

So, why not just get away from that stuff and avoid the problem all together, and still produce healthy crops that we can market to the rest of the world, like we're doing now?

That wasn't a question; it was just a comment. I'll come back to other subjects later.

CHAIRMAN ROBERTI: Senator Torres.

SENATOR TORRES: Mr. Chairman and Members, I want to thank each Member of the Rules Committee for allowing me the privilege of asking certain questions and laying out some areas.

For me, it's very difficult to conduct this kind of inquiry with a man whom I respect, and a man who I feel is sincere about what he has been doing with his life, and a man who, I think, has unquestioned integrity in terms of his own commitment.

I want to applaud you first, Henry, for the work that you've done in including other people in leadership, the Compact Leadership Program you've been involved in in the private sector.

So, I want you to know that these questions are not personal; they are business. And even though I may like you as a person, I don't like your policies or the

huge market. The demand is enormous.

And instead of buying the product, they fight when somebody says Alar shouldn't be sprayed on apples. They get mad about it.

Why don't you come up with some Alar-free apples, and you'll sell ten times as many?

I don't understand the attitude. I don't understand the mind set.

Ms. Johannessen, getting back to her, she wants to see a Director of Agriculture who's going to move into the 21st Century. And she said it best. Where is this movement forward for California agriculture? Be at the cutting edge. Be forward-looking, instead of using the same old stuff that people don't want.

MR. VOSS: Senator, 80 percent of all the fresh produce and vegetables, fruits, tested in California have no detectable residue.

CHAIRMAN ROBERTI: They're sprayed. There's no detectable residue, but something was sprayed.

MR. VOSS: Certainly they've been sprayed. The sprays have broke down. They are not there. People are not eating chemicals on all of the food that's marketed.

I think that overall, the health aspect of food has been well documented as it is sold in California today.

California agriculture is looking at that market. But the market forces that California agriculture deals with demands the product the way it's being produced, both

in the traditional, if you will, manner, and in a growing market, I will certainly acknowledge, in a chemical-free area.

CHAIRMAN ROBERTI: Well, I'm going to turn this questioning over to other people.

I think you're looking at the market because no alternative has been presented to the public in a reasonable economic and mass-produced fashion.

Some other country is going to come around and do it, and then we're going to wonder why Americans aren't buying American agricultural products or California agricultural products.

Any questions? Senator Petris.

SENATOR PETRIS: I just want to follow up briefly on what the Chairman of our Committee said for future use.

I'm troubled by the same mindset. It seems to be prevalent in industry as well as in agriculture. I carried a lot of legislation on air pollution at a time when the automobile industry insisted there was no problem. And then, finally they acknowledged there's a problem, but they said they weren't contributing to it. And this managed to get them the delay in corrective legislation for years. They just seemed to be so up tight; they don't open up. That's a mindset we find throughout corporate America, any kind of product, no matter what it is. I find this deplorable.

Now, on sustainable agriculture, I've carried legislation on that. We had the same thing. The conventional farmers came in and opposed a modest experimental program that would offer a few dollars to farmers who wanted to try some alternative to pesticides by giving them modest grants by a board administered through the University of California.

Conventional farmers insisted that they be represented on that board. They had never invited an organic farmer to sit on any of their councils; they were considered aliens from outer space. And they were no economic threat. It's just the mindset that Senate Roberti is talking about. I don't understand it.

We finally managed, after tremendous opposition from the Department -- this was before your time -- which just didn't think it was a good idea to go into this at all. Now, we spent many, many, many millions of dollars of the taxpayers' monies subsidizing research by UC Davis and other campuses that were designed to help the farmer produce, and I have no objection to that. But when it came to offering a paltry few dollars to people who take a different approach, they opposed it; the Department officially opposed it.

Oddly enough, at the national level, when President Reagan was in office, the U.S. Department -- maybe you were there at the time -- the U.S. Department praised this approach and wrote to all the departments in

the states, urging them to consider it and take a good look at it, that this is the way to go.

Finally we got the bill passed, and we have small amounts of money now.

The reason I mention it is, I think part of the problem here is some kind of a mindset that says: we're not willing to be innovative and follow new programs. And in the limited instances where we do, it's such a small amount it doesn't really enable us to do very much.

So, I want to put in a plug for expanding the sustainable agriculture program. It's become a model for the country already, and it's such a modest thing we're doing here. It doesn't, you know, meet the need at all.

We also have the new phenomenon of supermarkets in this area advertising the fact that they certify that their stuff is pesticide free. That's a relatively recent development.

So, I think Senator Roberti is right. There is a market out there for it. It ought to be pursued a lot more vigorously. And it seems to me the Department ought to be playing some kind of role. Your role is to help in the production and the marketing, I suppose, to a certain extent, distribution, and that really ought to be increased. I would hope you would be strongly behind expansion of a sustainable agriculture program. That way, we wouldn't even encounter these problems, and we don't have to quarrel about what's the impact of low dosage.

Department's policies.

So in that frame of mind, I hope that we can have a good-hearted discussion as to some of these issues which I'm about to ask you.

MR. VOSS: We always have been able to, haven't we, Senator.

SENATOR TORRES: Good.

I've heard, quite frankly, and you've heard today a small group of people from Southern California who have been here for most of the day, and traveling all of yesterday to get here. And I want to applaud them in their continued effort to do that and to be here to articulate their concerns.

So often those of us in politics and public life have to subsist and defer to the perceptions that we may not create ourselves, but perceptions that are created by interpretation of our actions.

There is a real deep-seated resentment that the Crystal Cathedral was not sprayed, when every other area of Southern California was sprayed one evening. There is consistent resentment when Disneyland was not sprayed, yet every other area was sprayed.

So, I would hope that maybe one of your assistants or lieutenants could call right now and make sure that the Rose Bowl is not sprayed tonight, because that's where these people have to get to in terms of getting back to their homes this evening, because they're

on a bus going back to Southern California. So, I hope you take that into consideration.

The other thing is that Mikhail Gorbachev recently said that history punishes those who are late. So, I want to give you, Henry, an opportunity to make history, because I think can do it, and I think you're the best person situated to do that.

I'm a second generation Californian -- not as long as you've been here -- but I'm concerned about the future of California. I've worked very closely with the California Women in Agriculture. They've educated me over the years. And I would put my voting record with any other rural Legislator in terms of how I've been supportive of agriculture, except when it comes to pesticides.

And it's very frustrating when we hear that we had our mail looked at. If we have beagles, I'm sure they will come from Hoffman-LaRouche Laboratories to determine and smell out our articles.

Yet why does the Governor veto on two occasions legislation that increases enforcement at the border to look for pesticide residues from other countries, which would have helped our farmers, who have to submit to stricter standards? Why does that kind of attitude persist?

The second attitude that persists is the frustration in dealing with pesticides. And some of your assistants have said that some of our are grandstanding on

this issue, and I take that concern, because I've been on this issue for 21 years. I'm 43 years old now, and I started on this issue when I was a lobbyist here, and many of these young people around this board room were here at that time. As a law student, I started as a lobbyist for California Rural Legal Assistance. I've been involved with the issue of pesticides for 21 years, Henry. I don't think, maybe, you know that.

Part of that frustration is the way this issue was handled. I think that goes to your administration as Director of the Department of Food and Ag., which I want to clue you in on.

There never was established a hotline for people to call to. People already feel neglected by government, but when they hear helicopters, as we do in L.A. all the time, and now they're spraying us, there's no one to call to. So, some of the ladies that are here today put together their own little hotline in their home so people could call, not knowing what kind of response they would get.

One woman testified that she received 26,000 calls. I said, that's not possible. She showed me the data that she had: 10,000 of those calls were health-related. Ten thousand of those calls were directly, personally, health-related. "I'm vomiting." "My child's vomiting." "I'm having a rash." I'm having a reaction." All of that.

When I was involved with CRLA in terms of dealing with pesticide poisonings, no one could figure out what it was because for the most part, as you well know, pesticide poisoning has the same characteristics as the common flu or as a cold. And we had to get legislation through this man over here, and this man, and even Senator Beverly voted for it, and I think Senator Craven voted for it as well, to educate physicians so they could recognize the tell-tale signs of pesticide poisoning.

And so the attitude was not to even set up a hotline that people could call to. I would think that would have been the first step in order to cover ourselves as to government being responsive, especially after the debacle in '81 and '82 in terms of spraying Santa Clara County.

The second issue is, we've never sprayed such a large population of urban areas before. Now, you may not know this, but I live in the country here. I have a home right here in the country, and I also live in an apartment in Highland Park in Southern California. So, at 6:00 o'clock in the morning, you know what happens. I have 160 acres behind me, and little biplanes start coming down, and they start swooping at 6:00 in the morning. It's my alarm clock in the area called Clarksburg.

And then I go home on Thursday night to L.A., and I get awakened even earlier than that by helicopters that are spraying me with malathion.

Now, some people may say, "Well, that's why he votes the way he does. Maybe that's the problem."

But again, you're dealing with a population that is changing and has no understanding of what it has to deal with in terms of spraying.

I'm not going to argue whether malathion is good or bad. I know what it is, and I don't think it's good.

What I'm going to argue is that again, a leader such as you, who can make history, ought to be out in the forefront saying that we ought to educate as to what to look for, what symptoms to look for, who to report for, and to show that you care -- and I think you do -- show that you care about a different population that's out there that doesn't know what it means to be sprayed, and doesn't feel good about liquid coming from the heavens on top of us.

Now, farmworkers are used to that, and that's what I'm concerned about. In 1986, the EPA issued a study on parathion. And yet, when a young man by the name of Jose Martinez, on January 23rd, died because of pesticide poisoning, on February 8th, 1990, your Department issued a release, which I don't think was quoting you. It was quoting some other -- as I call them -- "burrocrats" in the Department. And it said:

> "To call for a ban on the chemical
>
> ..."

referring to parathion,

> "because of this fatality is an

overreaction to an emotional situation."

Yet it was Ronald Reagan's EPA that said:

"The California data indicates that workers are being poisoned despite the use of protective clothing."

So again, we come back to the attitude of a Department. And that's why I say you have an opportunity to make history here, because you can change the course of what some people regard as the sacred cow of California, agriculture, because we've been ingrained here in Sacramento that we have to protect it, it's for the country, et cetera, et cetera, et cetera. It's an industry that we have to maintain. Yet no one begins to question the kind of attitude that needs to happen in terms of the program, and in terms of educating a people in Southern California as to what agriculture needs, and how we can work together in that area.

Because, as you've heard every witness here today -- and I applaud them for it -- they've invariably said, "We recognize that agriculture is important, but we recognize that our health care is important."

What you should have done is appointed a health panel immediately, on December of last year, to make sure that you had input not only from the pest scientists, but also from the public health scientists to have a balanced view, if only to show that you were objective, or your

Department was objective, in dealing with this issue.

Now to my questions.

When do you think the Mediterranean fruit fly will be eradicated in Southern California?

MR. VOSS: Unless there's new infestations found, I would believe that we would have it eradicated by sometime last June, early July.

SENATOR TORRES: So, I can go back to my constituents in Los Angeles and say we will not be sprayed after June?

MR. VOSS: With the one proviso, if there's a new area found, that time clock just starts to run on two generations on it at the time that we start -- when that's found.

I would believe that we will have sufficient medfly by late May that we -- we may not have eradicated it, or assured ourselves that it's eradicated yet, but that the biological medfly control would take the place of malathion spraying.

SENATOR TORRES: Now, why did we react so quickly with the program of eradication without utilizing other methodologies, like the sterile fruit fly?

MR. VOSS: We used the used the sterile fruit fly to the extent that we had capacity to produce sterile flies. We have had a facility that was constructed in the '81-82 outbreak, and with the capability of about 100 million flies, which you and the Assembly, along with the

administration, has funded to keep on line year to year at a cost of someplace between $600,000 and $1 million, just for this type of infestation.

SENATOR TORRES: So why didn't we have it available?

MR. VOSS: We had it available. We had 100 million. That's the capacity of the plant.

It's just like having -- how many fire trucks should you have? Someplace along the line, you have to make a decision.

We took the -- excuse me. Go back just a little bit further. USDA approved a facility to be built by USDA to be used not only for California, but Hawaii and elsewhere throughout the country, which is now coming on line, but for whatever reasons, had a delay of almost two years over what was originally projected as the time to put it on line.

We have, three weeks ago now, rented additional facilities and have -- are in the process of growing our breeder stock or brood stock, if you will, in another facility that will allow us to produce another 100-150 million flies by early in May.

SENATOR TORRES: So why can't you stop aerially spraying today until you receive adequate health care data?

MR. VOSS: In order to assure ourselves that what we have started continues, we need to continue the spraying because the pupae, if they have pupated, are in the ground

and are hatching out from time to time. And the spray is to keep that population from increasing prior to the time that we can start the sterile portion of the medfly program.

SENATOR TORRES: When would the sterile portion of the medfly program begin?

MR. VOSS: We're projecting that the first of May, we will have the additional ones that will be able to be released in those areas that are now being sprayed.

We have two areas in the Los Angeles area already that are receiving medfly and are not being -- have only been sprayed once back in late fall. And then we ran out of our capacity as these new infestations have been found.

SENATOR TORRES: How much will it cost us to eradicate the medfly in Southern California in dollars?

MR. VOSS: I think our best judgment today will be around $30 million, half of which will be paid by California and half by USDA.

SENATOR TORRES: So, $15 million will come from California; 15 from the U.S. Department of Agriculture?

MR. VOSS: Right.

SENATOR TORRES: How much is it going to cost us for your public relations campaign to educate Southern Californians it's okay to spray?

MR. VOSS: We have no plans at the Department at this point for a public relations campaign.

SENATOR TORRES: So, you have not hired a public

relations firm; you have not decided within the Department to have a public relations campaign on the medfly situation?

MR. VOSS: We are working on public relations through our public relations officers and information officers both in the Department and in Health Services.

SENATOR TORRES: So, there is no contract, there are no contracts between the California Department of Food and Agriculture and the California Farm Bureau?

MR. VOSS: Not to my knowledge.

SENATOR TORRES: There are no grants being awarded to the Farm Bureau through the California Department of Food and Agriculture?

MR. VOSS: Not to my knowledge.

SENATOR TORRES: Senator Wilson from the United States Senate has recommended the creation of a single environmental affairs agency, which is similar to a bill that I introduced a few years ago and was defeated, to create the regulation of pesticides from the Agriculture Department to this new environmental agency.

Are you supportive of such an effort?

MR. VOSS: I haven't seen the details of his proposal, Senator. I would believe at this point in time that I would have to wait and see what and how the program is to be moved from where it is today to whatever the new agency might be.

SENATOR TORRES: You haven't personally committed

to support Senator Wilson for the governorship of California?

MR. VOSS: No, that's not true. I have committed to support Senator Wilson.

SENATOR TORRES: You are committed to support Senator Wilson, but all not all of his programs?

MR. VOSS: Correct.

SENATOR TORRES: The Farm Bureau has an initiative being prepared; is that correct?

MR. VOSS: Yes, sir.

SENATOR TORRES: And in conjunction with other groups, addressing the regulation of pesticides; is that correct?

MR. VOSS: Correct.

SENATOR TORRES: In 1989, Assemblyman Bruce Bronzan authored a measure, 2161, which I tried to amend but couldn't in various committees, which, among other things, established an industry funding mechanism to pay for the increased monitoring of pesticide residues in food; is that correct?

MR. VOSS: Correct.

SENATOR TORRES: It's our understanding that the Farm Bureau's initiative, if passed by the people of California, would repeal the funding mechanism in the legislation that this Legislature passed and the Governor signed to monitor pesticide residue in foods; is that correct?

MR. VOSS: I'm not sure of that. I thought that their initiative was in addition to whatever's there today.

SENATOR TORRES: If the initiative proves to remove the funding that was put into Assemblyman Bronzan's bill to monitor pesticide residue, would you oppose the Farm Bureau's initiative?

MR. VOSS: I couldn't say at this time.

SENATOR TORRES: Do you think that pesticide residue ought to be monitored in California?

MR. VOSS: I certainly do.

SENATOR TORRES: So, you would be opposed to any kind of effort to remove funding that the Legislature approved to monitor pesticide residue in foods?

MR. VOSS: Correct.

SENATOR TORRES: So then, if the Farm Bureau initiative proves to remove the funding from the Bronzan legislation, it might be argued that you would oppose such an initiative?

MR. VOSS: I believe that the initiative addresses several other areas, and in total it might over ride my concerns on this issue.

SENATOR TORRES: What possible concerns could be over ridden by not monitoring pesticide residues on food?

MR. VOSS: We have monitored pesticides for many years. We continue to monitor pesticides, and the Bronzan legislation increased that monitoring. It did not supersede the monitoring that went on. It's an addition to

monitoring. So, we would continue with the monitoring we have been doing for several years.

SENATOR TORRES: Which, according to the GAO, the federal agency, indicates that that monitoring has not been effective, especially at the borders.

MR. VOSS: The responsibility at the borders is first USDA's.

SENATOR TORRES: I understand that. And the GAO said that the USDA was not effective in monitoring pesticide residue at the borders.

MR. VOSS: However, we test -- about 20 percent of our monitoring tests are made on produce imported into California.

SENATOR TORRES: Twenty percent?

MR. VOSS: Twenty percent of the tests that we do make; 80 percent on domestically raised produce, 20 percent on imported produce.

SENATOR TORRES: So, only 20 percent of the imported produce is being tested for pesticide residue?

MR. VOSS: That's not true.

Twenty percent of the samples, 20 percent of the tests that are taken, versus 80 percent, is 20 percent on imported products, 80 percent on domestic grown products.

SENATOR TORRES: We've talked about conflict of interest here in this Legislature, and Senator Roberti and Senator Maddy, as has Senator Craven, I know, been very stalwart in ethics legislation for the Legislature,

especially in light of honorariums, especially in light of conflict of interest legislation.

Would you be willing to support the adoption of conflict of interest provisions similar to those that were recently established for the members of the California Waste Management Board, that would provide that any person who has been an employee with the Department should not act as an agent or attorney, or otherwise represent any other person, for decisions involving the California Department of Food and Ag.?

MR. VOSS: I'm not sure I have a full understanding of what that would mean.

SENATOR TORRES: That would mean that if you were to pass or support this legislation, you couldn't participate as an agent or an attorney, or otherwise represent any decision involving the Department which you had headed for three years.

MR. VOSS: I think that could be supported.

SENATOR TORRES: You could be supportive of that?

MR. VOSS: Yes, sir.

SENATOR TORRES: Lastly, Mr. Chairman and Members, do you believe pesticide regulations, as undertaken by you as the Director of CDFA, do make the Department more responsive to consumer concerns about pesticides? How are we doing that?

MR. VOSS: I think that to the extent that the regulations allow, the Department has become more open. I

think it will continue to become more open in response to the consumer, the public's concern in the areas of pesticide, pesticide monitoring, pesticide use, and pesticide testing.

There are issues, though, that are not open to the general public at this time under the regulations that we live with.

SENATOR TORRES: Right now, local agriculture commissioners pass an exam developed by the California Department of Food and Agriculture to qualify for an appointment list. From that list, we decide who will be appointed as the agricultural commissioner for the various counties of California.

This exam has historically placed no emphasis on knowledge of consumer health issues.

Do you think the test ought to be changed to include more representation of consumer health issues on it, and that be required of potential county agricultural commissioners?

MR. VOSS: I think it certainly ought to be looked at.

SENATOR TORRES: Would you be supportive?

MR. VOSS: Yes.

SENATOR TORRES: Does the California Department of Food and Ag. still contract with the ALRB for space for some of its personnel?

MR. VOSS: Not to my knowledge.

SENATOR TORRES: What's the current relationship and ties between CDFA and the ALRB?

MR. VOSS: None. None that I know of, anyway.

SENATOR TORRES: So there's no communications between CDFA personnel and the ALRB?

MR. VOSS: Not officially.

SENATOR TORRES: What does that mean?

MR. VOSS: Well, I mean, not that somebody's been directed to do. I don't know what people may do in their personal knowledge and friendships with people.

SENATOR TORRES: Would you ban parathion's use in California today?

MR. VOSS: Not today.

SENATOR TORRES: So, you reject the EPA's 1986 report on its toxicity?

MR. VOSS: I haven't read that report personally. I don't think the EPA has proposed banning parathion.

I think that maybe it's time we take a look at it, if that report is there, and maybe the Department has, but that's not one that I have personally been made aware of whether we looked at parathion since EPA's report in '88 or not.

SENATOR TORRES: Well, Henry, somebody's not talking to you then, because that report's been out since January 28, 1986. And let me quote to you from it, by Reagan's EPA:

"Parathion is acutely toxic to

humans through all routes of administration. It is classified in toxicity category Number One, 'the highest possible ranking for acute toxicity.'"

Now, as the Director of the California Department of Food and Agriculture, you ought to have at least constructive notice that this report's around. And if somebody's not telling you, I'd start asking your staff, as I would when I've found out that I've made mistakes about not knowing what I should know and making statements that I should have been making. I look into it as to why I wasn't told about those statements.

We're talking about a major report that's now four years old that tells us that even in those instances, that the California data even includes it even when workers are protected, that they're still being poisoned.

MR. VOSS: All I can say is, I'll certainly look into it.

SENATOR TORRES: Who wrote the press release that your Department issued?

MR. VOSS: I think the press release indicated that parathion and the death were still under investigation, that until the investigation was completed, if not said directly it's inferred, that the previous position would continue to be in effect. And that was not one which would ban parathion.

SENATOR TORRES: So, at this point, you have no intentions of banning the use of parathion in California?

MR. VOSS: I didn't say that. I said that until the investigation is completed, I'm not going to ban parathion.

SENATOR TORRES: We will fax you a copy of the EPA report so that you're aware of it, because it's a very stinging report on a chemical that's still being used with farmworkers in California.

Lastly, and again my thanks to Members of the Committee for being so patient with me, there was a recent report, dated Sunday, December 24th, 1989, that quoted a scientist by the name of Cunningham.

Are you familiar with Mr. Cunningham?

MR. VOSS: Yes, sir.

SENATOR TORRES: And he said that:

> "The government may have made a critical error in its battle against the Mediterranean fruit fly this summer by ordering aerial pesticide spraying before the true size of the pest population was known. Roy Cunningham, a U.S. Department of Agriculture medfly expert in Hawaii, and chairman of the Scientific Panel advising the current medfly eradication program, said, 'The

rapidity with which
malathion-bearing helicopters were
launched may have ironically masked
the true size of the infestation and
provided a false sense of confidence
that the problem had been solved.'"

Do you agree with him?

MR. VOSS: Dr. Cunningham made that statement, made that as an alternative to why maybe the infestation is what it is. I think Dr. Cunningham, sometime after that, was quoted in the L.A. Times as saying that he supported the recommendations of himself and the committee. At the time he continued to believe that they had done, under the circumstances and past experience, what they should have, but they may have underestimated the potential of the problem.

SENATOR TORRES: Henry, this issue is not about Henry Voss; it's not about Torres; it's not about Deukmejian.

It's about the quality of life that we're going to lead in the 21st Century: what kind of chemicals we're going to tolerate in our day-to-day existence; the fact that growers are really at a disadvantage by the chemical companies in their of their research that needs to be improved to provide less toxic chemicals and pesticides to be used; the growing concern of consumers to want shiny apples, maggot-free peaches, beautiful other fruits and

vegetables that we're used to, that you've made us used to as agriculture.

It comes down to making some sacrifices on both ends, in that maybe we won't find the shiny ripe tomatoes if we use less means of keeping ready for harvest, that we don't necessarily create a rural and an urban fight that ought not to be and shouldn't be. And it comes down, I guess, back to what I said earlier: that I hope that if you're confirmed by this Senate, that you do make history. You'll have a few months left under this Governor to make some historical, landmark decisions, and I hope that you exercise the vision that I think is inside you to make those kinds of decisions, because there are people from all over the state that are looking at what you do in the next few months if you're confirmed as Director to improve the quality of life, not only for agriculture, but for people who live anywhere in the State of California.

I wish you well in doing so. And I hope you make the right decisions for us.

MR. VOSS: Thank you.

CHAIRMAN ROBERTI: Mr. Voss, do you have any comments you would like to conclude with, any more comments?

MR. VOSS: Well, just, I think, Senator, once again, I think that I'm certainly aware and I certainly understand much of what many of the witnesses spoke about today, and their true concern and personal involvement in

-- and how they are affected, and their families, their communities, with the medfly eradication program.

I don't wish to spray any more than I have to. I have followed the advice of the scientific experts in the area of life cycles in the controlling of medfly. We have listened to the advice, and we have involved Health Services in the areas that we have used malathion, the use of malathion, the amounts of malathion.

And with the increased facility to produce medfly, I would say to you and your Committee, Senator Torres, the witnesses that have been here, as soon as we can get medflies on line, we will have them out there, and we will cease our spraying.

Until then, though, at least under the present situation with the emergency declared and the eradication program recommended for medfly, I'm afraid that I find myself in a position of continuing to spray the medfly.

We will do everything we can, though, to speed up the production of steriles and to acquire them wherever we can. We get surplus steriles from Mexico whenever Mexican facility has them, but it hasn't been something that we can count on from week to week.

Beyond that, Senator, I think I'm certainly happy to answer questions, but I think you pretty well know my position, you know where I am. We know what the concerns are, and we will put every effort into being able to address the health problems through Health Services,

through local medical authorities, through the medical committee that's being put together by Dr. Kizer. And we are very supportive of doing that and whatever else we can do in that area, whether somebody on the committee or whatever. We're open to any suggestions to help in that area.

Thank you.

SENATOR TORRES: You're not going to spray the Rose Bowl tonight?

MR. VOSS: Senator Torres, the decision not to spray the Crystal Cathedral was not made in Sacramento. If we had been asked, it would have been sprayed. It was made by the project manager who has the authority and who outlines the spray areas every night and is responsible for monitoring it.

The Disneyland grounds that have been mentioned a couple of times today are outside, right truly on the boundary, of the spray area.

The spray area is basically an area of one and one-half mile radius, or a three-mile circle, which brings up about nine square miles of spray area. We do that. The only variation is to pick major roads as division lines so they're recognizable and easily controlled in order to stay in the spaces.

SENATOR TORRES: What's the director's name?

MR. VOSS: Don Henry.

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: I'd like to change the subject. We've spent a lot of time, but there are a couple other vital areas. One is on aldicarb. I think Senator Roberti touched on it, and if I'm repeating, I'll ask the Chairman to let me know.

In September of last year, there was a subcommittee of the Pesticide Contamination Prevention Act. You're familiar with that?

MR. VOSS: Yes, sir.

SENATOR PETRIS: Composed of scientists. We call it a panel, and it represents Health Services, State Water Resources and Food and Ag.

After considering certain things that had happened with respect to the use of aldicarb, the subcommittee recommended that after October 27, which was one month after the report was written, that we ban the use of aldicarb.

I want to emphasize the make-up of the committee. It didn't come from us laymen; it came from people who're supposed to know the problem.

Our information is that that recommendation was rejected by you. Do you recall that?

MR. VOSS: Yes, sir.

SENATOR PETRIS: Can you comment on it?

MR. VOSS: Yes, sir.

I reviewed the report that was made by the advisory committee. The committee is advisory to the

Director. I looked at the evidence. We asked for further investigation out in areas where aldicarb is used.

Aldicarb has been used for 19-20 years in California, particularly in cotton and sugar beet growing activities. We have wells, thousands of wells, that have been monitored over a period of years where aldicarb, in the areas of aldicarb use, has never been found.

I asked our people to go to each county commissioner where aldicarb was used in any amount to have them identify areas in their county where there was long-term known use of aldicarb and to sample wells in those areas. Forty-nine wells were sampled throughout the state in the areas where aldicarb is used, and once again, no traceable amounts of aldicarb were found in the underground water.

On that evidence --

SENATOR PETRIS: Who did this study? Who was it that was checking? People in your Department?

MR. VOSS: Yes, sir. People who normally monitor water throughout the state.

SENATOR PETRIS: And based on that, you rejected the subcommittee's recommendation?

MR. VOSS: Based on that, I rejected the overall recommendation of the committee, but I did modify the use of aldicarb, reducing it considerably.

We restrict the use of aldicarb in areas where there is a high water table. The areas up in Del Norte

County where aldicarb was found in earlier, 1985-86, whatever, are an area where the water tables were four or five feet from the surface; rainfall up in 80-100 inches; conditions that are not normally found in the areas where the actual use in a normal farming operation has aldicarb.

So, we did not ban the use of aldicarb. We further restricted the amount that could be used, and put some more restrictions on the use of it in the areas where it could be used.

SENATOR PETRIS: Well, I'm puzzled by the conflict.

As I understand it, the subcommittee, you know, the panel, concluded that there was contamination, and therefore it shouldn't be used. And even one of the manufacturers of aldicarb was asked to make a study, and their tests showed that there was rapid mobility and persistence of aldicarb in groundwater.

Now you're telling us that, apparently, those two separate tests were inaccurate, or studies.

MR. VOSS: The circumstance, the issue that the committee talked about, was the one in Del Norte County. The one that the manufacturer did was on an experimental basis where aldicarb was used in greater, considerably greater, amounts than our standard agricultural uses on the crops that they're allowed to be used on.

The circumstances didn't appear to be the same, and the overwhelming evidence of wells tested over a period

of many years in areas that we knew it had been used in, would appear to override, in those areas, the banning of the use of aldicarb.

I think the other issue that one has to consider is that aldicarb is a granular material which is incorporated into the soil, has little contact with farmworkers or people working in the crops.

To replace aldicarb would take a minimum of two and probably additional folder sprays to cotton, would put a considerable amount more pesticide residue in to the environment to take care of the pests that are taken care of with just one application of aldicarb.

SENATOR PETRIS: Doesn't contamination of water present a danger?

MR. VOSS: Yes, it does, but I believe the regulations say that the Director is to ban a chemical if it is found to be in the water, or if it's probable to be found in the water.

I think the circumstances has [sic] to be more than just whether it's found in the water. The terrain, the geography, the hydraulics of the area have to have some consideration when you're looking at that -- that question.

SENATOR PETRIS: I have another one on toxic air contaminants. That's a different statute, way back in 1984, which requires a scientific review panel, again, with representatives from Food and Ag., Air Resources, and the Department of Health. This is legislation carried by

Ms. Tanner.

Our appointee, this Committee's appointee, was Dr. Glantz, who was an M.D. and a professor at U.C. Medical. He's been critical of the Food and Ag.'s evaluation of performance, because there's been very little done, according to him, to uncover certain compounds that this statute is supposed to be seeking out.

One of the criticisms is just dragging of feet and not doing enough work on it. He says in a report to Senator Roberti that the agency has brought only one compound to the SRP, ethyl parathion. On May 25, '88, the SRP recommended it be listed as a toxic air contaminant, but no action has yet been taken to identify this compound, even though it held a hearing in September of '88. Now, that's before your time, I realize that. It's the only compound that the Ag. Department brought to the SRP in the three years that the doctor has served on this panel. He says that the commitment of the Director of the Department at the time the Legislature enacted this bill was to process six compounds a year. We have a total of one.

Do you have any familiarity with that?

MR. VOSS: Yes, Senator.

I met in December with the people in the Department that work this area, with the new chairman of the committee, former dean from University of California, Dean Aldrich, and committed to him that we would work with him, work with the committee, and that we would start to

move those chemicals as rapidly as we can.

My understanding is that although originally there was committed to six chemicals a year, there was an understanding that it would be two chemicals a year. And we have two chemicals that are moving up through the system, and we will meet that requirement, and that was the understanding that Dr. Aldrich had.

SENATOR PETRIS: What was the reason for changing it from six to two?

MR. VOSS: I'm not sure of that, Senator. That was done --

SENATOR PETRIS: Before your time?

MR. VOSS: -- before my time.

SENATOR PETRIS: So, the program now is to try to cover two per year

MR. VOSS: Yes.

SENATOR PETRIS: Do you think that's adequate?

MR. VOSS: I don't really have a way to judge.

I think if we have the people, the resources, to do more than two, we'll do more than two, and I would commit to doing that. But I think my understanding is that part of the reason that the understanding of the two chemicals was, was a matter of having resources to do any more than that per year.

SENATOR PETRIS: One other subject, Mr. Chairman, which has to do with the report of the Senate Office of Research.

You're familiar with the findings in the report. To summarize them briefly, it had to do with the charge based on a kind of an audit that people did internally that numerous pesticides have been registered for sale in California without adequate warning, or with incomplete or lack of scientific data to justify it.

> "Fourteen percent of the pesticide products registered occurred in spite of scientists' identification of problems and/or recommendations not to register."

That's a problem that I have a big concern about, internal memos that are included in the report, signed by scientists expressing grave concern over the fact that their integrity as scientists has been undermined. The morale of a lot of them working there was affected. Some 27 quit since 1985, probably all of them before you arrived, although there were incidents fairly recently.

We seem to have a pattern here since '85 at least of scientists who are very able, whom the Department has engaged after a thorough search -- it's not easy to find these people all the time, and we're aware of that -- who did excellent work in trying to comply with the law. Passed their recommendations on to the registration people, who are not scientists, only in many instances to be overruled. You have a nonscientific judgment overruling the judgment of the scientist regarding the safety of a

product, regarding whether it had sufficient data base to justify a particular conclusion, regarding the warning label. There's a whole series of different things involved here.

Let me just quote one or two, and then I'll ask you to comment on the thing. I have to tell you, I've been concerned about this for a number of years, as has Senator Torres. We've labeled it in our criticism as politics versus science.

I know your Department responded by saying, "Well, you're inquiring into this as a matter of politics." I'd be eager to have somebody who wrote that explain, since I don't have any farms in my area, for one thing.

On the question of overruling the scientists, we have here a memo as late as May 12th, 1988, from a staff toxicologist to the Chief of Medical Toxicology, saying among other things, on the registration of a particular substance:

> "It was done without prior consultation with medical toxicology. There was no indication when the change was made nor who made the change."

This has to do with a change in a report, where the records show that there was a certain report made, and then when it got to the other side of the fence, there were changes made, which changed the impact and the substance of the

whole report:

"The idea that Registration ...

meaning the Registration Department,

"could alter our original document is a violation of scientific integrity. It also raises a question of legal responsibility. Signatures on a document are meaningless if the document can be altered afterwards, and it's led some of us ..."

meaning some of the scientists,

" to believe that they've been hired to work in the Department just for window dressing."

And the nontrained, untrained nonscientists just go on, in many instances, and do whatever they want, regardless of the evidence.

Let me cite a couple of others. In May of 1988, a Notice of Proposed and Final Decision was issued by the Registration Branch, recommending registration of some item:

"However, the medical toxicology review, dated January 14, '88, clearly states 'do not register,' and lists the reasons."

And yet, in spite of that, that item was registered and put

on the market.

Now, your Department's response to this was, well, this is a misunderstanding. The people who did the investigation on our behalf misunderstood.

I don't know how anything could be more clear than that.

One other example. In this letter it says:

> "In each of these cases ..."

and there are others cited above,

> "the ability, integrity and worth of the scientific staff of Medical Toxicology is questioned by Registration staff who are not trained in toxicology. I think this lack of respect and professional treatment is one of the major reasons people have chosen to leave Med. Tox. I hope this can be changed with a concerted effort led by management in our division."

That's the essence of one of the areas of great concern to me and other Members of the Senate.

There's another letter here, which I won't go into, it's dated a little earlier, April, '86, signed by several of the scientists, again directed to the Chief of that department, complaining basically about the same thing, so we have a pattern: '86, '87, '88. I haven't

seen any for '89; there may or may not be any there.

So, this troubles me. I'd like to have your comment on, first of all, the Department's reaction that says -- rather startling to me -- but it says:

> "It takes numerous instances out of context to fulfill political agenda."

You know, I take exception to that, and I'm offended by it. Not that I'm accused, in releasing the report, of doing something political. Our whole life, I guess, we do things political, and I'm willing to accept responsibility for things that I do that are political.

But I got to tell you, again, it's this mindset. I've been battling with the Department under both Democratic and Republican governors. The Department identifies itself not so much with the farmer, but with the chemical companies. That's been my experience.

I've had, like Senator Torres, a lot of meetings with Women in Agriculture, the farmers' wives. Splendid group. They were helpful to me in one of my bills. I've had meetings with farmers. And I say, "You know, my quarrel isn't with you. Your mission in life is to produce agriculture, to get the best crops that we can, and increase your production and sell them. We all applaud that. But these other guys come along, and they dump all these chemicals on you and say this is the way to go. You don't know the chemicals. You don't know anything about

them. You're not chemists. So you say, 'Well, if it's this good, we'd better use it.' So, maybe you rely on the Department, and the Department traditionally has either looked the other way and said, 'Yeah, go ahead and use it; it's okay.'"

That's been the pattern for all the years I've been up here, and that's approaching a hundred -- thirty, actually.

We just can't seem to break out of that. As was indicated earlier, there doesn't seem to be a genuine concern for the health of the public or the worker.

My original work in this was in protecting the worker. A simple bill many years ago that said, "Hey, if you're going to spray a field, post a sign that tells the worker what the ingredients are, what the symptoms are if he gets O.D.'d, and the name of a doctor to call." And simple instructions: wash your body and the infected area. That's all. That's all it was.

Never able to get that through. Year after year after year, that's too much. That's too much.

It suggests a mindset to me. It's the same kind of mindset that we get reflected in this report, and I don't like it. I just think it's the wrong way to go.

I'm asking you for your reaction to this report, other than the release that was put out by someone in the Department, and what steps, if any, you're taking to see to it that we don't have this overruling of scientists by

nonscientists on the basic protection of health areas.

MR. VOSS: Senator, let me say that I've asked for a complete step-by-step report on each one of the issues cited there. That should be available by the end of the month -- or the end of the week. And we'll have it in your hands, and the rest of the Legislature, very quickly thereafter.

The easy one, I guess, the numbers cited, I believe, were 16 percent turnover a few years ago. The Department at that time had 16 percent in its toxicology staff, but the overall rate in the Department was about 14 percent, somewhat less but still considerably high.

Turnover in the past 12 months has been 6.3 percent in toxicology, and 6.2 percent in the overall staff within the Department; down considerably.

I think that -- I certainly don't know all the answers to it, but there is a great call and a great need for toxicologists today. We have some very professional people on that staff, and some of them have opportunities to better themselves, and they're going to do that.

I can't speak for what the situation was a few years ago.

Of the 20 items listed, and I can't tell you specifically which ones today, 10 of those items have been tracked through where they were -- those data areas that toxicologists were concerned with, were -- evidence was provided that they needed -- judgment had been made before

they'd been registered. They tell me that when new, additional data is needed, when it comes from the manufacturer it gets a tracking number, and you don't track those responses and put them all together. The first tracking number that the chemical receives, and where it gets at toxicology, either to approve or disapprove, or the need for more information, that information, when it comes in, is tracked on a separate number. And 10 of those items will be shown in the report to have been -- had that information that the toxicologists had demanded before they were registered.

SENATOR PETRIS: Are you talking about bridging?

MR. VOSS: No. This is on the need for information.

There are, I believe, three chemicals or four chemicals that were bridged. One of them was mothballs, commonly used all over, but a bridging technique was used on four of them, if I'm not mistaken.

I can't speak to the others at this point. I know at least two of them were approved, as the report states, without filling those data -- that data concern that the toxicologist had.

The problem, I've been assured, was recognized and rectified as far as the Registration people overriding the toxicologists on a couple of those issues.

But once the full report's ready, sir, I'd be happy to sit down with you.

SENATOR PETRIS: Well, I'd sure like to do it, because I've got to tell you, the people who went in there are very scientific in their own methods, and I think the first reaction of the Department was really unfair, saying, "well, you just took stuff out of context because you're trying to hit us politically." That's not the motive at all. I don't think that's appropriate or worthy of a Department of that size and scope and importance in our society.

Let me just give you a couple more quotations. This is from 1986, an internal letter, signed by 10 scientists. The author of it says:

> "This is to notify you ..."

Again to the head of the department, or unit, Medical Toxicology,

> "I'm performing the task of revising the in-house legislative sheet on data gaps and potential adverse effects against my conscience and sense of scientific ethics"

There's nothing unclear about that. Somebody's leaning on them and saying, "Hey, we don't want you to do this. Go back and rewrite it. We don't give a damn what your scientific evidence shows."

I mean, that undermines the whole purpose of the statute. It's downright subversive of the statute.

Another one, a separate one in '86:

"There are individuals in the management structure who appear to understand many aspects of the state and CDFA systems. Yet these individuals, who are capable in certain areas, frequently have little training or understanding of scientific matters."

I'm kind of repeating the same idea.

Two years later, 1988, a staff toxicologist is hitting them for the same thing. And then the quotation is here, quote:

"If we do not make significant changes, meaning in stopping the interference with the scientific evidence, I feel the Medical Toxicology Branch will continue to suffer from morale problems and we will lose even more staff."

Now, that was in '88. You tell me that in the last 12 months, the turnover has dropped. I'd like to know why.

Was it during the 10 months that you were on, or the two months before, or a combination, or what?

This is one of several things that I would like to get an answer to. We're not interested in treating this as some political football, as is commonly said.

But I am, and have been for many years, interested in providing some kind of protection for our society, beginning with the farmworker himself, and extending to the consumer at the table and the people who are passing by, and the bees that get hit by drift, and you know, all the usual problems that we associate with it.

Again, I would couple this with an appeal to look into sustainable agriculture a lot more than we have. I think the public is now ready to insist on it, so it eliminates any doubt from their mind.

So, I guess your answer is we'll have to look at each one of those 20 things and talk about them.

MR. VOSS: Yes, I would like to sit down with you once we have all the answers.

SENATOR PETRIS: Thank you.

CHAIRMAN ROBERTI: Do I hear a motion?

SENATOR CRAVEN: Move Mr. Voss's nomination to the Floor.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Voss's nomination be recommended to the Floor.

Just very briefly on my vote on this matter, I have a great deal of respect for Mr. Voss. I disagree with the policies as far as malathion spraying and the general orientation toward pesticides rather than a gradual adaptation to change that I see in the Department of Agriculture.

For that reason, I'm going to vote against Mr. Voss's confirmation, but I hope he doesn't take it personally. It's really a profound disagreement on policy, and certainly not to be intended to cast aspersions as to Mr. Voss's character or background.

I want to put that in for the record.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: No.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: No.

The vote is three to two; confirmation is recommended to the Floor.

MR. VOSS: Thank you, sir.

[Thereupon this portion of the Senate Rules Committee was terminated at approximately 5:35 P.M.]

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 28, 1990

2:00 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JOSEPH C. SHELL, Member
Agricultural Labor Relations Board

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

SENATOR CRAVEN: Let's move next to Item Two, Governor's Appointees appearing today, Joseph C. Shell, Member of the Agricultural Labor Relations Board.

Mr. Shell, we'd ask you to come up and tell us why you feel that you're qualified for this very important Board.

MR. SHELL: Mr. Chairman and Members of this honorable body, my name is Joseph C. Shell. I'm identifying myself here. The Governor appointed me to the Agricultural Labor Relations Board about 90 days ago. And the purpose of this is confirmation, as you know.

I have one or two comments to make, and I'm not going to make them long.

I do recognize what the legislative intent was in the legislation when it was initially passed. And that intent was, and it is specific, to provide tranquillity in the agricultural fields through giving the workers the absolute right to select representation of their own choosing, and that is the law.

Those of you who have known me for a long time know that I will endeavor in every way that I can to make certain that the law is observed and obeyed.

One of the questions that Senator Petris asked me was about the workload. And it's just very possible -- and I think it's the case -- but in a short period of time -- not a short period of time, because right at the moment I feel like

a freshman Legislator in this job; I really do. I am really learning, and I think I can learn.

But with the workload coming down, I think that the Legislature should be congratulated in that portion of the legislative intent that said that we want to ensure tranquillity in the agricultural fields. I think a lot of the workload is because such tranquillity has been achieved in a great measure.

That's the only statement that I want to make, and I do commit to upholding the law.

And the only thing that the Governor asked of me was to be fair, and I assure you that I will try to be fair.

SENATOR CRAVEN: Very well, thank you very much, Mr. Shell.

Senator Petris, have you any comment?

SENATOR PETRIS: In the short time you've been on there, do you think, from what you've seen and what you've reviewed, and the history, that the act is working properly?

MR. SHELL: Oh, I think so, Senator. I really think it's working, I think, even beyond what the Legislature intended.

Because when you analyze the unfair labor practices that are filed,and you analyze the elections, I think you are seeing from a point of a tremendous workload the result of many, many years of unsettling things in agriculture. And I think this board -- and there have been a number of different boards and different political philosophies involved in it,

and it all comes back to a maintenance, I believe, of what I've seen and what I've read, a maintenance of the statutory law as it was written and for the purposes for which it was written.

Therefore, things have subsided, and there is no question but what the confrontations have been reduced, and reduced, and reduced.

SENATOR PETRIS: There's been a very substantial drop in the number of filings of complaints.

MR. SHELL: That's right, Senator.

SENATOR PETRIS: Do you attribute that to the effectiveness of the statute?

MR. SHELL: I think so, Senator; I really think so.

SENATOR PETRIS: The labor people feel differently. They feel that they just can't get a fair shake, so they quit filing the grievances.

MR. SHELL: Well, Senator, what I've been trying to do -- I've always had strange habits. I mean, I always try to open my office about 6:00 o'clock in the morning. My staff wasn't always happy with it in the Assembly.

But what I have been doing, and what I intend to continue to do, is to go back over the cases we've had over all of the years, and to try and find where the boards have wandered on the picture.

And as a matter of fact, I have in my pocket here a handbook that was written in 1978, just a couple of years after the first board started to operate. And I firmly

believe that the board as now and today is staying with this same handbook, that certainly was a totally different board.

All I can say is that from the inexperience I've had now, and that I certainly intend to try and see that the act is carried out verbatim as it was written. That would be my own position.

SENATOR PETRIS: Under the present statute, the General Counsel has some rather broad powers. It includes the power to settle a case that may have been pending for years on behalf of the workers without conferring with them, and even in the face of their opposition to the settlement. He can just settle it out, and he does.

Do you think that's a fair provision?

MR. SHELL: Senator, I think, very frankly, just from the short time I've been there, that I have seen just as many instances in which the General Counsel's recommendations have been turned down as being supported as far as the employers are concerned.

I mean, right at the moment, we're discussing some legislation which -- not legislation, but cases -- in which the employers have filed to throw out certain actions, and that the General Counsel has agreed they should be, and we have not agreed.

So, I think you will find that the interpretation that we will give at this point will be fair to both sides.

I promise you that I will not vote or attempt to get anything passed for one side that I wouldn't do the same for

the other.

SENATOR PETRIS: On this matter of settlements, the board actually doesn't have authority to do anything about it. If you don't like a settlement, whether it's fair, let's say whether it's fair to the employee or unfair, or to the employer, you don't have any power to review it or reject it; do you?

MR. SHELL: Yes, we have -- we have some powers. And as we talked the other day, one of the things that is taking me a little while to get used to is to get used to the consideration given to all of these questions by our counsel, by our legal counsel. And each board member has a legal counsel.

Sometimes it's a difficult situation to determine just what direction to go, because there can be five different, or six different, opinions from lawyers. And that makes it -- and also, to have precedent opinions from both sides of a question.

So again, that gets down to a point of attempting to be fair. And I really think the board generally now, I think you'll find it trying to be fair.

SENATOR PETRIS: So, you don't see any problem with that structure, with the act of the Counsel settling cases out without even conferring with the injured parties?

MR. SHELL: Well, yes --

SENATOR PETRIS: We've had cases in the past where they settled them for 15-20 cents on the dollar; huge amounts

of claims over a long period of time regarding various kinds of grievances, part of them in the make-whole thing, and part not.

MR. SHELL: You're basically getting into questions, then, Senator, of make-whole wages, and things like this.

SENATOR PETRIS: That's one of the issues.

MR. SHELL: That's one of them, and back pay.

And no, I don't have any problem at all of saying that in these cases, where there have been unfair labor practices, there should be back pay. We were just considering one that the back pay really was sufficient to put a company out of business, and yet we were supporting that back pay because it was right under the statutes.

There have been a couple of cases, the Del Porto case and the J.R. Norton case, that have been court decisions that come down and make some modification of that. But that hasn't bothered me too much.

But I can see that there are unfair things happening. On the other hand, there are some unfair things happening on both sides.

And I think that what you're talking about could be considered and could be changed in legislation.

SENATOR PETRIS: Let's take the precedents you mentioned earlier. The board has certain precedents.

There have been instances where an action has been dismissed by General Counsel even though board precedence in similar cases have ruled in the other direction. So, you

could say that the General Counsel's action was in violation of the board's policy.

Should that be allowed? Should the General Counsel be allowed to in effect overrule the board's prior actions in a particular case?

MR. SHELL: Well, now, since I have been there, which is not long, I have not seen that. I have seen the board --

SENATOR PETRIS: What if it happens? What would your position be?

MR. SHELL: That -- that that -- I would be very upset about it, Senator, very upset about it.

What I have seen so far has been that the board is very, very careful about retaining control of a case if we can retain it under the act. I would rather retain it than give it to anybody.

SENATOR PETRIS: Having known you for a long time, I think if you're upset about something, you're going to let people hear about it.

MR. SHELL: You're exactly right, Senator. You and I have found that.

SENATOR PETRIS: Yes, I have, having been on the receiving end from time to time.

[Laughter.]

MR. SHELL: Well, that, Senator, that's reciprocated.

SENATOR PETRIS: So, you wouldn't be intimidated by

the fact that this General Counsel has all this power and is exercising it contrary --

MR. SHELL: No, sir.

SENATOR PETRIS: -- to the board's own precedents?

MR. SHELL: No, sir.

SENATOR PETRIS: All right, thanks.

Thank you, Mr. Chairman.

CHAIRMAN ROBERTI: Thank you.

Any other questions of Mr. Shell?

Is there any opposition in the audience?

SENATOR CRAVEN: Move Mr. Shell's confirmation to the Floor.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Shell's confirmation to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to nothing; confirmation is recommended.

Congratulations, Mr. Shell.

MR. SHELL: Thank you, gentlemen.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:20 P.M.]

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of March, 1990.

Evelyn J. Mizak

EVELYN J. MIZAK
Shorthand Reporter

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BRIAN P. BILBRAY, Member
Air Resources Board

JOHN C. LUNGREN, M.D., Member
Board of Medical Quality Assurance
Division of Licensing

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P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN ROBERTI: Committee will come to order. A quorum is present.

SENATOR CRAVEN: I have Brian Bilbray, Supervisor from San Diego County. He has to get back to San Diego on a 3:00 o'clock plane, I gather.

If we can pick him up as quick as possible --

CHAIRMAN ROBERTI: Yes, we will pick up his item as the motion of Senator Craven without objection.

Brain Bilbray, Member of the State Air Resources Board.

MR. BILBRAY: Thank you, Mr. Chairman, and I appreciate the handling.

SENATOR CRAVEN: You're entirely welcome.

CHAIRMAN ROBERTI: We'll ask you what we ask all the Governor's Appointees, and that's why you are qualified --

MR. BILBRAY: Mr. Chairman, I can --

CHAIRMAN ROBERTI: -- to assume this position.

MR. BILBRAY: -- tell you that 14 years in local government has taught me a lot of things about the relationship between state policy and practical application, not in local government, but my -- I have served on other state regulatory bodies, the California Coastal Commission being one, but the -- also my involvement in regional strategies at the Air Pollution Control District and as being author of the regional growth management plan for San Diego County, Proposition C.

Most important, my -- I was involved in the negotiation for offshore oil drilling and its impact on air quality, which I would say was probably the most extensive negotiations of its kind ever to have occurred in this nation. Though it may not have been successful, I think it broke new ground. I won't go into detail on it, but I think that it's essential that we have a balanced Board, executing the state law.

And just as much as we need toxicologists to talk about certain issues, I think we need people with local land use authority and traffic control authority in our strategies, because one of our major stationary sources happen to be inappropriate land use decision and inappropriate traffic control.

So, I think that in all fairness, my membership will and has provided a balanced strategy for the implementation of the Clean Air Act in the state.

CHAIRMAN ROBERTI: Thank you very much.

Any questions?

SENATOR CRAVEN: I would only say a few words about Supervisor Bilbray. I've known him since he was a boy, which is within the last three years, I might add.

But he's been an outstanding Supervisor. He's very outspoken. He takes a lot of unpopular positions because he feels that there is a certain correctness in what should be done. And as you may have gotten an indication from what he said, these have proven to be successful, and sometimes he's

failed, but he's always tried. And that, to me, is very, very important.

I think if anybody is going to be appointed here, it has to be someone who has the attitude which Supervisor Bilbray has. I would be very, very happy to not only recommend him, but move his appointment to the Floor.

CHAIRMAN ROBERTI: Senator Craven makes a motion to move Supervisor Bilbray's appointment to the Floor with the recommendation to pass the confirmation.

Let me ask you a couple of questions; just more general interest questions.

Right now, local cities are not meeting the federal clean air standards. Is the Board proposing any measures to get some kind of compliance?

MR. BILBRAY: Mr. Chairman, I personally think that those of us that are on the Board that have local land use experience need to really lead the charge that cities and counties have to carry their part of the burden. I mean, it's so easy for those of us in government to point to industry and say, "You've got to reduce your emissions," but when it comes to jobs, job housing, trip balance, land use decisions that are very hot for us at the local level, or even something like traffic control devices that are inappropriate, those of us on the Board that have that kind of experience have to really start pushing that a strategy is implemented to mitigate those impacts.

So, I hope I answer your question. I think that we

need to have in the plans standards for local government to live up to, just as much as we have for the industry. And that was a major issue with the South Coast Air Basin issue. Everyone had standards for the industry, but when it got down to the local cog, it was like, "Well, we can't mandate our membership to live up to standards."

Well, somebody has to set standards for local government to live up to when it come to the air pollution. The hypocrisy can't continue on that item.

I think that somebody who's in local government and has a credibility in it, we're the people that really need to say it.

CHAIRMAN ROBERTI: Also on emission control from motor vehicles, do you have any ideas or proposals, or does the Board currently, to tighten up --

MR. BILBRAY: Well, first of all, I think --

CHAIRMAN ROBERTI: -- standards?

MR. BILBRAY: -- one of the great gaps we've had in our state separately is the diesel issue. Not that -- you know, diesel now has been identified as a toxic emitter, and regulations traditionally have left that sort of wide open. We're starting to tighten that up from two ways.

One, and this may not be popular, is that the oil companies have to clean up the fuel itself. We can't expect hardware to do it all. Even though that may not be popular in this state, we need to make sure the companies fulfill their side of the formula.

The other issue when it comes down to hardware is pushing very -- trying to work with the federal government to make sure that the national standards somewhere keep up to us, because we have areas of the state where there is massive impact by outside-state vehicles emitting in our air basin, and especially in San Diego, where you've got things like the Soldiers and the Sailors Act, where you've got employees of the federal government who are exempt from having to register in California and thus are protected.

CHAIRMAN ROBERTI: Thank you, Supervisor.

Any other questions of Supervisor Bilbray?

Is there any opposition in the audience?

Senator Deddeh, whom I saw in the coffee shop, wants me to note that he has highly recommended you.

MR. BILBRAY: Thank you.

CHAIRMAN ROBERTI: Senator Craven's motion is before us.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero; confirmation is recommended to the Floor.

Congratulations.

MR. BILBRAY: Thank you very much, Mr. Chairman, and thank you very much, Members of the Committee.

CHAIRMAN ROBERTI: Since we're into the appointments, why don't we take up Dr. John Lungren for the Board of Medical Quality Assurance, for reappointment to the Board.

So, I guess we'll ask you the same old question: why you feel you're qualified to maintain this position.

DR. LUNGREN: Well, Senator, I think -- I don't know whether you all have my latest CV or not.

CHAIRMAN ROBERTI: Here it is.

DR. LUNGREN: I think that's fairly self-explanatory.

CHAIRMAN ROBERTI: I just have one question.

If you could sort of illuminate me right now on what progress or what standards the Board is implementing on the issue of foreign medical school graduates. Is there a policy separate and above?

DR. LUNGREN: Well, I think one of the major factors that I'd like to do on my watch, if I would be confirmed, is the National Board Examination, which we hope will be in force actually this year or maybe next year, in which everyone, whether they're foreign medical school graduates or our own school graduates, have to take the test and have to pass it.

This is a cooperative effort on the part of all the

major medical societies and organizations.

It would eliminate what we call the FLEX, which is the one that's normally given to the foreign medial school graduates at this time.

CHAIRMAN ROBERTI: It would be the same test?

DR. LUNGREN: It would be -- in other words, an even playing field for everybody.

CHAIRMAN ROBERTI: I agree with that. I think that would solve a lot of the difficulties.

DR. LUNGREN: It would solve a lot of the problems. Solve a lot of the problems for us, too, because it has been a problem, as you know.

CHAIRMAN ROBERTI: Absolutely.

Are there any other questions of Dr. Lungren?

Is there any opposition in the audience?

SENATOR CRAVEN: I would move the appointment.

CHAIRMAN ROBERTI: Senator Craven moves the confirmation be recommended to the Floor.

Secretary call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero; confirmation is recommended to the Floor.

Congratulations.

DR. LUNGREN: Thank you.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:10 P.M.]

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of March, 1990.

Evelyn J. Mizak

EVELYN J. MIZAK
Shorthand Reporter

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 14, 1990

1:45 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

RONALD E. LOWENBURG, Member
Peace Officer Standards and Training

EDWARD A. MAGHAKIAN, Member
Peace Officer Standards and Training

ROBERT WASSERMAN, Member
Peace Officer Standards and Training

SOLON C. SOTERAS, Member
Teachers' Retirement Board

SENATOR DANIEL BOATWRIGHT

SENATOR BILL LOCKYER

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CHAIRMAN ROBERTI: I think we'll take up the three appointments to the Peace Officer Standards and Training Board at once: Robert E. Lowenburg, Edward A. Maghakian, and Robert Wasserman. If you could all come up.

You get to decide which one of you wants to start off. Why don't you say why each one of you are qualified -- we'll start with Mr. Lowenburg, since you're first on my list -- why you are qualified to assume this position, and then we'll go to Mr. Maghakian and then Mr. Wasserman.

MR. LOWENBURG: Thank you, Senator. Ronald E. Lowenburg, Police Chief --

CHAIRMAN ROBERTI: We've been joined by Senator Dan Boatwright.

MR. LOWENBURG: -- Police Chief, City of Huntington Beach.

In regards to my qualifications, I've been in professional law enforcement now for 23 years. I have worked for a number of law enforcement agencies. Of course, my present assignment is Police Chief in the City of Huntington Beach.

I've sat on the POST Advisory Committee for a number of years, which I feel makes me qualified for the appointment, the proposed appointment, to the POST Commission.

I'd be more than happy to answer any questions the Senator might have about my qualifications.

CHAIRMAN ROBERTI: Thank you very much,

Mr. Lowenburg.

Mr. Maghakian.

MR. MAGHAKIAN: Thank you, Mr. Chairman. My name is Ed Maghakian.

My qualifications for this position -- it's a reappointment. I was appointed originally and confirmed by the Senate -- is that I've been in active law enforcement for approximately 24 years: the City Police Department of Santa Cruz, Capitola, and on the California Highway Patrol. I served as the first three-term president of the California Association of Highway Patrolmen and retired from the California Highway Patrol in 1984.

I support the ideals of law enforcement in the State of California.

CHAIRMAN ROBERTI: Thank you very much.

And finally, Robert Wasserman, Member of the Peace Officer Standards and Training.

MR. WASSERMAN: Thank you, Mr. Chairman. My name is Robert Wasserman.

I am currently the Police Chief in the City of Fremont. I've been in law enforcement for 36 years and have been a police chief for 20 years.

I have been involved in police training for almost all of that time; served on the POST Advisory Committee from 1976 to 1983; was appointed to the POST Commission in 1983, reappointed in 1986 and '89.

I'm very proud of what the POST Commission has done

to improve police training, and I would like to remain a part of that.

CHAIRMAN ROBERTI: Thank you very much, Chief Wasserman.

Are there questions by the Members of the Committee? Senator Boatwright, I understand you would like to ask some questions.

SENATOR BOATWRIGHT: Mr. Chairman, I thank you for holding this hearing. It was done so at my request because I think there's a very important thing that certainly should be brought to the attention of the Rules Committee.

I passed out a statement to you. It's rather brief, and if I might, by way of informing these three gentlemen of my concern, I would like to just take a couple of minutes and read this. It's only three pages long.

I learned something about POST last year which concerns me. I introduced legislation in 1989 dealing with POST training for peace offices so they would have some awareness of the signs of Sudden Infant Death Syndrome, the leading killer of children under one year of age in California and in the nation. It is not a rare occurrence. In 1988, 810 babies died in this state of SIDS, as confirmed by autopsies. Only 20 babies under the age of one were the victims of homicide, and most of the babies in the latter category were obvious homicide victims, with a gun, knife, blunt instrument, or other obvious physical force being involved.

However, with the very intense focus on child abuse

throughout the State of California, including by POST and police officers, a growing number of presumed SIDS parents and caregivers are being treated as if they were criminals at the scene of a baby's death. Parents have been handcuffed, separated from each other and their baby, and they have been arrested, only to later have an autopsy reveal that SIDS was the cause of death.

Well, you can't unring the headlines in the newspaper that say, "Parents Arrested for Death of Child," and it's happened all over the state. And the Members of this Committee that sit on the policy committees heard the women, saw the headlines. We brought them in, showed you the newspapers. And it's a very common occurrence. I have a litany back here of numerous cases I can refer to where it happened and what happened.

To me, that wasn't surprising after we investigated, because we found that POST provides 80 hours of child abuse training and all of its signs during police academy training, but there is no SIDS training. So, officers are often unaware that SIDS victims may exhibit a frothy or blood-tinged mucus or vomit in or around the nose or mouth; that purplish molted areas of lividity may be present -- that's a pooling of blood which is often confused, as you know, with massive bruising, as former police officers -- and that the body may be in an unusual position.

In 1989, and I think this is significant, only 213 peace officers received any SIDS training whatsoever, and that

was a voluntary four-hour in-service training program.

Before I introduced my series of bills, I advised -- I was advised by representatives of law enforcement organizations that POST would likely oppose based upon, quote, "principle", but I introduced the bills anyway because I was confident the facts would illustrate the need for the law.

POST had some initial policy concerns regarding language in the bill, which were resolved by our staffs. And as the POST analysis of the bill as amended June 23rd, 1989 states, quote:

> "The requirements that the training be included in the basic training course and be applicable to all peace officers in the classes included in the bill were deleted."

Unquote. And that was the concern of POST as enumerated to me, was that it was not to be included in the basic training course.

The training will come after academy and before final certification, as agreed upon with the representatives of POST. We did that.

What I'm really getting at is this. In spite of meeting every single concern which POST staff expressed to me, POST remained opposed to the bill because, quote: "The Commission is opposed to the principle of legislated training."

Now, that's why I'm here today, Members of the

Rules Committee. I understand from POST staff that the commissioners feel there has been too much legislation passed by the Legislature and signed by the Governor in recent years requiring peace officers to undergo special training. We have laws on sexual assault training, child abuse investigation procedures, domestic violence procedures -- and I think you were involved in some of these, Senator Roberti, as I recall -- training for attending to people with developmental disabilities, training for missing person location efforts, and now SIDS awareness.

I have been told the commissioners feel it is time to draw the line and oppose all legislatively mandated training because the hours of training keep expanding, costing more money, and because they, not we the Legislators, are better equipped to identify police training needs.

It's interesting to note that SIDS parents have been complaining for years, and we have letters that we submitted to the POST people, to POST about the need for SIDS awareness training, and yet there had been no effort to teach about SIDS in any of the police officer academies.

Senate Bill 1067 was signed into law over the Commission's objections, and POST staff, in my opinion now, is doing an excellent job implementing that training program. I think they're committed to having this in place according to the bill, July.

But basically -- and here's the bottom line, Members of the Rules Committee -- I always thought that

Legislators were elected by the public to respond to policy needs and to determine state policy. And that administrative executive branch functions were just that; were to carry out the enumerated laws and policies of the State of California.

I felt that if POST simply opposes legislation based upon principle, simply on that basis alone, taking away the prerogative of the Legislators to legislative, if we have to always simply fight them even though we might have a good bill simply because it's their policy that they not be told through legislation what they are to teach.

And I have here before me an analysis by POST that is dated -- this is their last analysis -- 7/6/89, and the staff recommended that POST change from oppose to at least go neutral on the bill. Not necessarily support; the recommendation was to simply go neutral.

A motion to change the Commission's position from oppose to neutral died for lack of a second at the July 20th, 1989 POST Commission meeting on the basis that the Commission is opposed to the principle of legislated training.

That's why I asked for this hearing today, because, Members of the Rules Committee, I feel very strongly that we are supposed to legislate, and the executive branch of government, directly and through its various commissions that we create by legislation, is to carry out the functions of legislation, along with things that, of course, they feel are reasonable.

I felt I should bring this to the attention of the

Members of the Rules Committee because you're the ones that assign the bills. You are the ones that basically determine where they go and the fate of those measures. A lot of you here were cosponsors of this legislation. It was needed. It was needed.

And I think to most of you, I sent information, if not all of you, setting forth a litany of situations that had occurred in the year just prior to 1989 that demonstrated the need. And I sent it to Sheriff Block and the other members of the POST Commission.

An Oakland mother frantically called 9-1-1 last year -- that would have been '88 -- when she found her 18-day old baby not breathing. Ambulance attendants wouldn't enter her home until after police arrived, saying it was in an unsafe neighborhood, Oakland. When police arrived, they handcuffed the grief-stricken mother in front of her other children. They wouldn't let her call her husband. And to this day, the little daughter who observed this thinks that her mommy killed her little baby sister because the police put chains on mommy. Anyway, autopsy confirmed that it was SIDS.

I have a Santa Rosa case, a Manteca case, Vallejo case, a Huntington Park case, a Dublin case, a Union City case, another Oakland couple that were arrested because they had an unopened jar of rubber cement in the baby's room. That was the basis for the arrest. A Hayward couple, an Oakley couple, Dublin foster mother, San Mateo daycare

worker, and on and on and on.

So, you can well see that the police have not been trained in California to recognize a SIDS death as opposed to other types of deaths, the child abuse death.

These bills were needed. Since they have passed, Senator Hollings, numerous Congressmen, have written and asked for copies of this bill. They are introducing national legislation based upon our four model bills. Over a dozen states have already written us and asked for copies of this legislation with the intent to copy it, because no other state has legislation on SIDS.

So, I just felt that the Rules Committee should perhaps know that the POST commissioners feel the Legislature should not legislate mandates with respect to POST training.

I feel that's wrong. I feel that's our duty as Legislators.

So, I simply wanted to bring this to your attention. I just feel it's wrong.

I don't have anything personally against any of you gentlemen, but I feel that you should realize my person opinion, not the Rules Committee, that the Legislature is here to legislate for all the State of California, including POST. And if a measure passes, and we work with your staff, staff reveals to us that you're not opposed to the legislation except on the principle that you don't like us legislating -- you may love the bills, but you don't like us legislating -- I think that's wrong.

That's all I wanted to say.

CHAIRMAN ROBERTI: Thank you very much, Senator Boatwright.

Would one of the chiefs or officers like to respond to the Senator?

MR. WASSERMAN: I'll respond. My colleague on the left wasn't on the Commission at the time.

The Senator's points in respect to the needs to the problem of SIDS are well taken, and I would like to say that I have never heard a commissioner express any opposition or any -- or question the need for that kind of training for police officers.

As a matter of fact, in my department, and I know of others, we have several -- three or four years ago, took it upon ourselves to provide SIDS training, not as extensively, but at least some semblance of it to create awareness.

It was not -- I don't think that anybody -- again, I know that nobody on the Commission had any opposition to SIDS training. The opposition -- and here again, I have never heard a commissioner suggest that we should at any time be categorically denying or opposing anything -- but we feel that it's important in our training programs to maintain flexibility and to avoid locking in training needs that may change.

If I can give you an example, if we were sitting here 40 years ago talking about the horrible problem of

polio, and it passed legislation, chances are we'd still be training in polio, and that wouldn't be necessary.

I hope SIDS also goes away; I don't know if it will. But the point is that we felt the need for some flexibility in our training, and did not in any way feel that we would not provide that kind of training. The Commission was perfectly willing to. And as the Senator said, we're moving along and doing that, and we will do it quite well.

CHAIRMAN ROBERTI: Thank you very much, Chief.

Are there any other questions? Senator Petris.

SENATOR PETRIS: Well, I'd like to echo what Senator Boatwright said and make a strong recommendation.

Obviously, the Senator was carrying legislation, and he must have gotten the word somewhere from POST that they opposed it on that basis.

I don't think the Senator is saying you can't oppose legislation, but you have to have a reason. It has to fit into your scope, your mission and the statute, rather than a blanket rejection of any meddling with POST.

Now, we've had that experience before. Many years ago, before any of my colleagues were on the Rules Committee, we had a fellow named Ray Procunier who ran the prison system and was up for a different assignment. And in reviewing his track record, we found repeated statements, some of them made in court, that he didn't like the Legislature meddling into his affairs. He didn't want us enacting any legislation on the conduct of the prisons.

That resulted in his rejection. We had hearings that went over a period of three weeks. I wound up subpoenaing witnesses; I brought in court records. We really worked him over.

The basic reason, as far as my attack on him, was -- because he was good in other respects -- he just had this attitude that he was running this kingdom, and the Legislature was getting in his way, and he didn't want any direction or any statutes from the Legislature.

And he was an appointee of Governor Jerry Brown. So, I was taking on a Democratic Governor's appointment on the basis that he didn't understand his role as an administrator.

Now, he can fight against a bill all he wants and offer the reasons, but once it's enacted, that becomes the law.

I guess we should commend POST. You said that now they're operating it and doing it very well, which is fine.

But to oppose it because the Legislature is kind of interfering with their operations just by offering legislation is a bad way to govern.

So, I wanted to bring in that anecdote from the past in support of what Senator Boatwright has said.

CHAIRMAN ROBERTI: Thank you very much.

MR. MAGHAKIAN: Mr. Chairman, honorable Senators.

I would like to make the statement that, first of all, I'll go on record saying that I never expressed, nor did

I ever hear a commissioner on POST express, any idea of the Legislature meddling. That term was never used in my presence.

I believe that the training that you spoke about is definitely needed. I sympathize and I am sensitive to that training.

The only issue that POST was concerned about was that putting things mandated by law sometimes removes the flexibility, and in addition, requires training for many, many people who are considered peace officers who have absolutely no contact whatsoever with children, and would then lessen the impact of what your exact desire is.

POST is willing, able, and required by its principles to be guided by the Legislature. Some of you on this commission -- on this Rules Committee know me personally, and I've worked with you in the past, and I support the Legislature very strongly.

But in this particular issue, I think we're being blamed for something that we did not intend, nor I don't intend. And myself and Commissioner Wasserman have sat on the Commission during the discussion of this particular issue. Commissioner Lowenburg was not on the Commission at that time.

Our only concern was that the legislation would address a situation we're both sensitive to, but we wanted it to be impacting, and we wanted it to be a meaningful training, and we didn't feel that the legislative intent of

your desire would be to mandate it for a lot of people who didn't necessarily benefit by the training.

CHAIRMAN ROBERTI: Senator Lockyer.

SENATOR LOCKYER: Thank you, Mr. President.

I just wanted to add a word as one who represents and works with Chief Wasserman.

I concur with the comments made about the SIDS program and legislation, and I think Senator Boatwright knows of my own commitment to those matters, and to our general philosophy regarding the separation of powers.

Chief Wasserman is one of the few more humanitarian voices from the more conservative part of my district and often is pushing me on assault rifles, or whatever, legislative matters of some interest to the Members of the Committee.

But I wanted to point out that it is a department that has demonstrated, I think, extra sensitivity to the humanitarian aspects of law enforcement, seeing their responsibilities in a broad way, and he personally has an exemplary career, and I hope that you'll be reconfirming him.

CHAIRMAN ROBERTI: Thank you, Senator.

I think Senator Boatwright makes an important point, and that is, the public policy we deal with has to encompass a whole range of things. Not that yours is a narrow focus, but you are focused in on law enforcement, which is terribly important, but your work has repercussions that go way beyond that. Those are the policy questions that

we try to untangle.

I just think the problem is the horror of a parent being arrested after they've already gone through the grief of a child's death. I can't think of too many things that are more enormous on a family. It really does demand the element of sensitivity that probably goes beyond just the cold calculation of separation of duties.

So, I couldn't emphasize more that I hope you take those kinds of things, that we establish some kind of working relationship, so that when the Legislature tries to make those points, it's considered.

Senator Boatwright.

SENATOR BOATWRIGHT: I just want to say in answer to you that we took every single amendment that was requested by the POST staff. It's not part of the basic training course. You have absolutely leeway with respect to the hours, all that kind of stuff. We took every single amendment that was requested by the POST staff.

They recommended that you remove your opposition. And I read from the minutes, I assume, because that is the POST analysis I read from that said that the POST Commission is opposed in principle to the Legislature legislating directives to POST, just like Procunier. Same exact thing.

What bothers me is this. As a result of the situation in Long Beach, where you asked my committee to go down, and Senator Bill Greene, and Senator Torres and the people who were there, out of that we really found that --

and I dealt with your POST people; they came down to the hearing -- that there is a real need for some sensitivity training, as testified to by the chiefs that were there: the former chief, the current chief; as testified to by officers; that there was a need for sensitivity training in dealing with minorities. Because, I mean, pretty soon we're going to be a minority state.

So, as a result of that, the committee has two bills that have been introduced as committee bills that addressed the subject of POST. And if simply the Legislature feels that this is an area, based upon the people coming forward in the committees and testifying, that this is something POST should address themselves to and teach, based upon this hearing, very extensive hearing down there, comes up with simply because you're opposed in principle, and oppose legislation on that basis and no other basis, I don't think that's right.

MR. LOWENBURG: Senator, with all due respect to Senator Boatwright, and I was not on the Commission at the time, but I was on the POST Advisory Committee. And I do have to say that this issue about cultural awareness came to our attention some time ago. In fact, the Advisory Committee certainly supports the work that you did down in Long Beach.

The point is that the Advisory Committee that advises the Commission was sensitive to that long before those hearings and were thinking of moving in that direction. And I appreciate you seeing the importance of that.

And as a police professional, chief executive of a department and now a new member, hopefully, of the Commission, I do feel the same as my peers here this afternoon, that I have never heard any of the commissioners, and I certainly will stand on my record and will never be heard saying, publicly or privately, that the Legislature has no business meddling in law enforcement's business.

Because I think that there's an important partnership, if you will, for what you recognize in your constituents in the area that you're responsible for, and the constituents that we serve. And I think us working together can make California a better state, instead of working apart. I appreciate that, Senator Boatwright.

SENATOR BOATWRIGHT: I appreciate that, and I'm not opposing them, per se. I felt this is something that's very important to the Legislature.

Senator Roberti, there's a letter. I wrote my concerns to Sheriff Block, who I guess was the Chairman of the Commission at the time. He wrote me a letter back in which he also says -- and it's right behind where you're reading, Senator Roberti, the report -- his answer also reiterates what staff put in their report: we are opposed to the Legislature legislating and telling POST what to do. It's in his letter also.

So, maybe we can work together a little better, and when we meet your concerns, instead of simply opposing on the basis that we shouldn't be legislating, we can work better

to, you know, provide protection to the people of California.

CHAIRMAN ROBERTI: Thank you, Senator.

MR. WASSERMAN: I would just -- without taking a lot of your time, I would add that I don't -- I really don't believe that we're at great odds. Obviously, there was some disagreement in this case, but I think that we both have the same things in mind.

We have always tried to be responsive to the training needs that were expressed by the Legislature. In the area of cultural training, we've been -- the Commission has sponsored seminars. We have been active in that area and are already formulating plans in that area.

So, I would just like to say that we don't ignore the Legislature. We know the importance of the Legislature, and we respect the Legislature.

CHAIRMAN ROBERTI: Thank you very much.

Is there any opposition in the audience?

Do I hear a motion?

SENATOR CRAVEN: Mr. Chairman, I would move the nomination of Messrs. Lowenburg, Maghakian and Wasserman to the Floor.

CHAIRMAN ROBERTI: The three nominations have been moved with the recommendation of confirmation to the Floor of Ronald Lowenburg, Edward Maghakian and Robert Wasserman to the Peace Officer Standards and Training Board.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero on the three confirmations. They're recommended to the Floor.

Very good.

The next nomination is Solon C. Soteras, Member of the Teachers' Retirement Board.

Mr. Soteras, will you tell us why you feel you're qualified to assume this position?

MR. SOTERAS: Mr. Chairman, my professional career started in 1955, when I joined the Small Business Administration as a financial specialist. I stayed there until 1960. Then I joined the Ahmanson Bank and Trust Company in Beverly Hills. I've been there until 1976, when Mr. Ahmanson sold the bank because Home Savings was going public, and at that time it could not own a retail bank. I stayed on with the new owners, and I am still there.

I've been in the banking business 30 years. I feel that I have some knowledge in real estate, stocks and bonds, and that is the crux of my career.

CHAIRMAN ROBERTI: Any questions of Mr. Soteras? Senator Petris.

SENATOR PETRIS: I think in answer to your first question, if you look at his first name, which is Solon, it gives you the answer. Among other things, this great law giver had basic fiscal reforms way back in the oldest days of Athens.

Anyway, Mr. Soteras, I want to ask you a few questions and get some impressions from you regarding the operation there.

Did we take a beating in the junk bond problem?

MR. SOTERAS: No, sir. We didn't have any junk bonds whatsoever in our funds.

SENATOR PETRIS: Does that mean we shouldn't have? Obviously, looking back, it's a pretty good policy. Is that a deliberate thing, or just coincidence, or what?

MR. SOTERAS: No, we felt -- of course, I've only been on the Board about six months, but we felt that they were risky, and that we're dealing with the retirees' money and we should be very conservative in the way we invest it.

SENATOR PETRIS: I'm glad of that.

Who is it that makes the decision on investments? I know that for a time, we had a lot of difficulty getting real experts aboard because the state pay was so low. I remember Jesse Unruh worked very hard to try to get real top experts and get special provisions in the law to allow us to raise the salary by an enormous amount because they didn't

even come close to matching what the private sector was paying very, very skilled people for this work.

Now, are these staff people the ones that make the decision, or is it done in concert with the Board on particular investments? How is that done?

MR. SOTERAS: Senator, we -- our chief investment officer is under contract, and he reports direct to the Board. He is not civil service. He's a professional that former Mr. Unruh had brought in to us.

I think that he's an excellent man to have in our agency there.

We also have money managers. We have real estate advisers that advise us on real estate issues, and investing also in stocks and bonds and so forth. And they are specialists in their fields.

And we review -- every quarter, we review their performance. And if their performance has dropped a significant amount, then we will call them in and find out what's happened and even replace them. We have a cancellation clause in their contract.

SENATOR PETRIS: Has that happened at all?

MR. SOTERAS: Not since I've been there, sir.

SENATOR PETRIS: So otherwise, on the day-to-day decisions, that's done by the experts who are hired for that purpose?

MR. SOTERAS: Yes, sir.

SENATOR PETRIS: What is the principle mission of

the Board itself, other than this overview. Is that it?

MR. SOTERAS: Well, yes, we do overview.

SENATOR PETRIS: Do you think we're getting our money's worth for the professionals that we hire?

MR. SOTERAS: I think we are, sir.

SENATOR PETRIS: We run into the problem of the unfunded liability of STRS. It comes up, the STRS issue, all the time.

Do you know what it is right now?

MR. SOTERAS: I think we have about $10 billion in unfunded liabilities.

SENATOR PETRIS: Is there a program that the Board is recommending for making that up?

MR. SOTERAS: Well, it goes over a period of 20 or 30 or 40 years. As of now, we really haven't figured out how to take care of that.

SENATOR PETRIS: There's also talk that you get so many billions, the earnings are enormously high, that sooner or later the question is raised: shouldn't we reduce contributions since the earnings coming in are so high? Make it easier on both the employer and the employee.

Have we reached a point where that is feasible or advisable?

MR. SOTERAS: Senator, in 1989, the income off the fund was $3 billion. I think we paid off in benefits a billion dollars, so we made -- we made $3 billion profit for the one year.

But we have been discussing the possibility of possibly reducing.

SENATOR PETRIS: That's under consideration now?

MR. SOTERAS: Yes.

SENATOR PETRIS: You don't know how it's going to go?

MR. SOTERAS: No, sir.

SENATOR PETRIS: Is there actually a time table for reducing that 10 billion? You mentioned maybe 30 years, but is there actually something in place that has that goal?

MR. SOTERAS: Yes. They do have a -- we haven't got our actuarial. We should get it by this meeting tomorrow. We'll know exactly how they have figured out. It's either 20 or 30 or 35 years, and we will know more about it when we read that actuarial.

SENATOR PETRIS: When you have a net gain like '89, is that surplus applied --

MR. SOTERAS: Yes, sir.

SENATOR PETRIS: -- to reduction of the debt, the unfunded?

MR. SOTERAS: Yes, sir, it is.

SENATOR PETRIS: There's been some suggestion, I don't know by whom, that some of the appointments ought to be made by present Board members, some fraction of the appointments, by people who have served on there for a while and know the type of person that is needed and whose judgment should be taken into consideration.

Have you given any thought to that?

MR. SOTERAS: I really haven't, Senator.

SENATOR PETRIS: I don't know if that's a good idea or not, but I've heard it from time to time.

MR. SOTERAS: You have, for example, different categories.

SENATOR PETRIS: By law.

MR. SOTERAS: By law, an insurance man, a banker, school teacher, and so forth.

SENATOR PETRIS: There's only one banker on there?

MR. SOTERAS: Yes, sir.

SENATOR PETRIS: You're the one.

MR. SOTERAS: Yes.

SENATOR PETRIS: Thank you.

CHAIRMAN ROBERTI: Thank you, Senator.

Is there any opposition in the audience to Mr. Soteras' appointment?

SENATOR CRAVEN: Move the nomination of Mr. Soteras to the Floor.

CHAIRMAN ROBERTI: Senator Craven moves the nomination to the Floor.

Senator Beverly.

SENATOR BEVERLY: I didn't have a question.

I just note in the file here that the nominee is strongly supported by Mr. Robert De Kruif. I've known him for 27 years, a friend of many of us.

SENATOR PETRIS: Yes, I have a letter from

Mr. De Kruif. He's well known to all of us.

CHAIRMAN ROBERTI: Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero; the confirmation is recommended to the Floor.

Thank you, Mr. Soteras.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:38 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of March, 1990.

Evelyn J. Mizak

EVELYN J. MIZAK
Shorthand Reporter